United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-6154 ORIGINAL

76-6154

B

P/S

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-6154

CADET TIMOTHY D. RINGGOLD, Individually and on behalf of all other similarly situated cadets of the U.S. Military Academy,

Plaintiff-Appellants,

-v.-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Department of the Army, LT. GEN. SIDNEY B. BERRY, as Superintendent of the USMA, BRIG. GEN. WALTER F. ULMER, Commandant of Cadets, USMA, CADET WILLIAM ANDERSEN, as outgoing Chairman of the USMA Honor Code Board Committee, and CADET MICHAEL IVY, as incoming Chairman of the USMA Honor Code Board Committee,

Defendant Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FILED
NOV 29 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

SILLER and GALIAN
Attorneys for Plaintiff-Appellants

PAGINATION AS IN ORIGINAL COPY

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PLAINTIFFS

CADET TIMOTHY D. RINGGOLD, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED CADETS OF THE U.S. MILITARY ACADEMY,

9/27

DEFENDANTS

OWEN, J.

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, AS SECRETARY OF THE DEPT. OF THE ARMY, LT. GENERAL SIDNEY B. BERRY AS SUPT. OF THE U.S.M.A. BRIG GENERAL WALTER F. ULMER, COMMANDANT OF CADETS, U.S.M.A. CADET WILLIAM ANDERSEN, AS OUTGOING CHAIRMAN OF THE U.S.M.A. HONOR CODE BOARD COMMITTEE, AND CADET MICHAEL IVY, AS INCOMING CHAIRMAN OF THE U.S.M.A. HONOR CODE BOARD COMMITTEE.

J.N.

CAUSE

CIVIL RIGHTS. DEPRIVATION OF DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS AMENDMENT THEREOF. U.S. CONSTITUTION.

ATTORNEYS

SILLER & GALIAN
370 LEXINGTON AVENUE,
N.Y.C. N.Y. 10017
MU 3- 1043

9/27

JUDGE OWEN

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12/9-76

UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

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UNITED STATES DISTRICT COURT DOCKET

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76 Civ. 2112 CADET TIMOTHY D. RINGGOLD, ET-AL VS. THE U.S.A. ET-AL JUDGE OWEN

DATE	NR.	PG. 2. PROCEEDINGS
06-01-76	1	Filed Complaint, Issued Summons.
06-02-76	2	Filed Defts'. affidavit in opposition to Pltffs'. motion for a temporary restraining order.
06-02-76	3	Filed Pltffs'. affidavit & Order to Show Cause appointing a 3 Judge Court & injunctive relief and T.R.O., ret. 6-9-76 at 10:30 a.m. in Room 301. .....Owen,J.
06-03-76	4	Filed Defts'. affidavit & Order to Show Cause with temporary restraing order ret. 6-9-76 at 10:30 a.m. in Room 301.....Owen,J.
06-08-76	----	Filed Memo End on Doc. #4 - Pending hearing the attacked subpoenas are stayed in their entirety.....Owen,J. (mailed notice)
06-11-76	5	Filed summons & marshal's return. Served: Cadet Michael Ivy by certified mail Receipt # 233627 on 6-7-76 Cadet William Anderson by certified mail Receipt #233628 on 6-7-76 Brig. Gen. Walter F. Ulsner by certified mail Receipt #233630 on 6-7-76 Lt. Gen Sidney B. Berry by certified mail Receipt #233626 on 6-7-76 Martin R. Hoffman by certified mail Receipt #233625 on 6-7-76 Attorney General Dept. of Justice, Wash.,D.C. by certified mail Receipt #233124 on 6-7-76. U.S. Attorney, S.D.N.Y. on 6-3-76.
06-17-76	6	Filed Opinion #44586 - Plfff's. motion to convene a three judge court is denied.....Owen,J. (mailed notice)
06-21-76	----	Filed Memo End on Doc. #3 - Pltffs'. motions for a temporary restraining order, for a preliminary injunction and for the appointment of a 3 judge court are denied.....Owen,J. (mailed notice)
06-24-76	7	Filed envelope containing letter of Timothy Ringgold, dated 5-20-76, Ordered sealed & impounded by Owen,J. (placed in vault in Cashiers Office).
07-06-76	8	Filed Pltffs'. notice of appeal from the orders denying motions for a 3 judge court & temporary restraining order. (mailed notice)
08-11-76	9	Filed transcript of record of proceedings dated 6-9-76.
08-19-76	10	Filed true copy of U.S.C.A. Stip & Order dismissing the appeal without prejudice.
09-03-76	11	Filed Opinion #45041 - Defts'. motion for summary judgment is granted....Owen,J. (mailed notice)
09-13-76	12	Filed Judgment that Defts. have judgment against the Pltff. dismissing the complaint.....Clerk. (mailed notice)
09-27-76	13	Filed pltffs/appeal to USCA orders of J. Owen on 6-16,18, 1976 and Opinion of 9-3-76 nd judgment of 09, 13-76. (m/n)
10-28-76		Filed Affidavit of Daniel W. Shimek, Sworn to on June 7-76, re: chronology of events concerning discovery of a substantial number of possible cheating cases arising out of an Electrical Engineering home study computer problem given to the Class of 1977 at the Academy on 3-4 March 1976.
10-28-76		Filed Affidavit of Edward G. Galian, sworn to on June 8-76, in reply to and opposition to order to show cause to dismiss complaint.
10-28-76		Filed defendant's Memorandum of law in opposition to plaintiff's motion for preliminary injunction.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____ Deputy Clerk

B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CADET TIMOTHY D. RINGGOLD, Individually and on behalf of all other similarly situated cadets of the U.S. Military Academy,

Plaintiffs,

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Dept. of the Army, LT. GEN. SIDNEY B. BERRY, as Supt. of the U.S.M.A., BRIG. GEN. WALTER F. ULMER, Commandant of Cadets, U.S.M.A., CADET WILLIAM ANDERSEN, as Outgoing Chairman of the U.S.M.A. Honor Code Board Committee, and CADET MICHAEL IVY, as Incoming Chairman of the U.S.M.A. Honor Code Board Committee,

Defendants.

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76 Civ. 2442

NOTICE OF APPEAL
TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CADET TIMOTHY D. RINGGOLD, individually and on behalf of all other similarly situated cadets of the U.S. Military Academy, the plaintiffs herein, hereby appeal to the United States Court of Appeals for the Second Circuit from the orders

of the Honorable Richard Owen, District Judge, denying plaintiff's motion for a three judge court, preliminary injunction and temporary restraining order entered in the above-captioned proceeding on the 16th and 18th day of June, 1976, (heretofore duly noticed for appeal by Notice of Appeal, dated June 22, 1976, and withdrawn, without prejudice, pursuant to order entered upon the Stipulation between Counsel for the respective parties hereto); and from the Opinion and Order entered on the third day of September, 1976, of the Honorable Richard Owen, District Court Judge, granting defendants' cross motion for Summary Judgment dismissing plaintiff's complaint and Judgment entered on the thirteenth day of September, 1976, dismissing plaintiffs' complaint.

New York, New York

September 23, 1976

SILLER & GALIAN, Esqs.

By Edward B. Galian

Attorneys for Plaintiffs
370 Lexington Avenue
New York, N.Y. 10017
Tel. (212) 683-1043

To: Honorable Raymond F. Burghardt
Clerk
United States District Court
Southern District of New York

Honorable Robert B. Fiske, Jr.
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CADET TIMOTHY D. RINGGOLD, individually and on behalf of all other similarly situated cadets of the U. S. Military Academy Plaintiff, -against- THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Department of the Army, et al, Defendants.	76 Civil 2442 (RO) JUDGMENT

Plaintiff's motion for a preliminary injunction and for the convocation of a three judge Court having been denied, and defendants having cross-moved to dismiss, and the Court having treated the said motion as one for summary judgment, and the said motion having come on to be heard before the Honorable Richard Owen, United States District Judge, and the Court thereafter on September 3, 1976, having handed down its opinion granting defendants' motion, it is,

ORDERED, ADJUDGED and DECREED: That defendants THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Department of the Army, et al, have judgment against plaintiff

CADET TIMOTHY D. RINGGOLD, individually and on behalf of all other similarly situated cadets of the U. S. Military Academy, dismissing the complaint.

Dated: New York, N. Y.
September 13, 1976

/s/ RAYMOND F. BURGHARDT
Clerk

SEP 03 1976
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CADET TIMOTHY D. RINGGOLD, Individually and on behalf of all other similarly situated cadets of the U.S. Military Academy,

Plaintiffs,

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Dept. of the Army, et al.,

Defendants.

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76 Civ. 2442

OPINION AND ORDER

45041

OWEN, District Judge

This action -- an outgrowth of the most recent so-called "West Point cheating scandal" -- contests the constitutionality of the Cadet Honor Code (the "Code") and Honor System (the "System") maintained by the United States Military Academy. Plaintiff Timothy Ringgold, suing on behalf of himself and others similarly situated, is a cadet in his third year of studies charged with a violation of the Honor Code. In previous decisions, I denied his motions for a preliminary injunction and for the convocation of a three-judge court. On this cross-motion, the government has moved to dismiss. Because I am asked to consider affidavits and documents outside the pleadings, I treat this as

a motion for summary judgment.

In his complaint, plaintiff asserts his cause of action in the most general of terms. He contends:

> That the illegal fostering, implementation and enforcement of the said Cadet Honor Code is detrimental to and impedes the fulfillment of the mission of West Point in that it is subjectively invoked, unequally implemented and enforced and creative of divisiveness and discontent among the cadets who are expressly required thereunder to spy and inform upon their peers. (¶18)

He seeks an injunction (1) banning the Code, (2) eliminating or dismissing all officers or bodies whose function is to implement and enforce it, (3) discontinuing all pending hearings, trials and investigations relating to Code violations, (4) reinstating all cadets previously found guilty, (5) rejecting all resignations submitted in response to charges of Code violations, and (6) expunging from service records all references to Code violations. Although it is difficult to perceive behind the exceedingly general language of his complaint, any specific legal cause of action or basis for the sweeping forms of relief sought, in passing upon this motion, I interpret the complaint to incorporate all the various arguments that he has advanced: specifically, that the Code and System are unconstitutional because (1) the executive branch of government is without the authority to promulgate them, (2) the Code is excessively vague, (3) the same penalty is applied regardless of the seriousness of the

violation, (4) the System denies cadets due process of law, and (5) the Code creates divisiveness and encourages various base qualities by requiring cadets to "spy" upon each other.

The Cadet Honor Code consists of the creed that "a cadet will not lie, cheat, or steal, nor tolerate those who do." The sole sanction for a violation is separation from the Academy.

Under the Honor System, cadets are given the responsibility for administering the Code and investigating in the first instance suspected violations of it. To fulfill this responsibility, cadets are elected by their peers to the Cadet Honor Committee. In most instances, a suspected violation of the Code is first investigated by a cadet "regimental honor representative," then referred to a subcommittee for further investigation, and, finally, if the subcommittee so recommends, referred to a cadet honor board, consisting of twelve voting members, for a hearing and determination whether there has been a violation. At the hearing, the accused is given the opportunity to testify, to present witnesses on his behalf, to submit questions to other witnesses, and to respond to the evidence against him. If there is a guilty verdict -- which must be unanimous -- the cadet is sent to

a "transient" barracks and requested to resign.[1]

The Honor Committee does not have the authority to order the separation of a cadet from the Academy. If that is sought, and if the Superintendent of the Academy concurs, the Committee's findings are sent to a Board of Officers which conducts a further and de novo hearing. Before the Board, an accused cadet is entitled to have counsel, to present evidence on his own behalf and cross-examine adverse witnesses. 32 C.F.R. §519.1. The Board then submits a recommendation to the Superintendent who in turn forwards his recommendation to the Department of Army Headquarters for final decision. Dept. of Army Regs. 16.03(c).

Plaintiff was initially charged with the Honor Code violation of "toleration"[2] because he asserted, at a meeting with the Undersecretary of the Army and various other cadets, that numerous cadets not then charged with Honor Code violations had engaged in acts comparable to

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[1] This description is based upon the pamphlet, "Honor Committee Procedures" put out by the Committee. In an introductory memo, the Committee's chairman notes that the procedures set forth are neither permanent nor legally binding on the Committee.

[2] "Toleration" is defined in the Honor Committee instruction booklet as "knowingly permitting a violation of the Honor Code to go unreported." Honor Instruction (U.S.M.A.) at 2.

the ones committed by those who had been charged. After he refused to answer questions about this statement put to him by the Chairman of the Honor Committee or appear before the Committee, he was found guilty of toleration by the Committee, and sent to a special barracks. Initially, the Superintendent declined to forward the Committee's finding to a Board of Officers. But after plaintiff questioned him why charges were being dropped and apparently repeated his earlier statement about knowing of unreported violations, the Superintendent recommended that he be investigated by a Board of Officers. It was at this point, prior to a hearing before the Board, that plaintiff filed his complaint.[3]

The government urges that the court does not have jurisdiction to hear plaintiff's complaint. It does not dispute that "(t)he relationship between the Cadet Honor Committee and the separation process at the Academy has been sufficiently formalized, and is sufficiently interdependent, so as to bring that committee's activities within

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[3] This account is based upon the submitted affidavits of plaintiff and of the Staff Judge Advocate at West Point. Although they differ in some specifics, the exact sequence of events is immaterial for the purposes of this motion.

the definition of governmental activity for the purposes of our review." Andrews v. Knowlton, 509 F.2d 898, 906 (2d Cir.), cert. denied, 423 U.S. 873 (1975). Nonetheless, the government argues that the complaint should be dismissed because the doctrine of exhaustion of administrative remedies requires plaintiff to appear before an Officer Board and, if necessary, pursue his right to appeal to the Superintendent and Army Headquarters prior to bringing this action. Plaintiff responds that because he challenges the legality of the entire system, rather than confining his attack to procedural aspects of its application, the exhaustion doctrine is not applicable here.

It is well established that in a typical case involving a decision by military authorities, the plaintiff must exhaust his remedies within the military before appealing to federal court. See e.g., Michaelson v. Herren, 242 F.2d 693 (2d Cir. 1957). This doctrine is designed both to preserve the balance between military and civilian authorities, Horn v.Schlesinger, 514 F.2d 549 (8th Cir. 1975), and to conserve judicial resources. Yonan v. Seamans, 380 F.Supp. 505 (N.D. Ill. 1974). There can be little doubt that if plaintiff were challenging the Committee's findings that he was guilty of toleration, he would be required to exhaust his military remedies before appealing to this court.

Plaintiff, however, does not deny that he has violated the prohibition against toleration. Rather, he attacks its legal and moral basis, and that of the entire system of which it is a part. To insist that he further pursue his military remedies would be to require him to participate in that very system whose legality he denies.

Further, it is doubtful that a Board of Officers could consider the arguments raised here. According to Army Regulations, Board proceedings are "administrative and not judicial in nature." 32 C.F.R. §519.2(b). It is essentially an investigative body, staffed by non-lawyers, whose primary function is to "ascertain the facts" rather than make legal judgments about the validity of the standards in question. 32 C.R.F. §519.1. And even if the Board could consider plaintiff's contentions, such claims, based solely upon constitutional grounds, are "singularly suited to a judicial forum and clearly inappropriate to an administrative board." Downen v. Warner, 481 F.2d 642,643 (9th Cir. 1973)(challenge to Marine Corps regulation on grounds of sex discrimination). Although the Staff Judge Advocate apparently reviews the Board's proceedings, the government has pointed to no stage in the appellate route within the army at which plaintiff would have the opportunity to present his arguments to a judicial body. Accordingly, I

conclude that plaintiff's claims are not barred by the exhaustion doctrine.

The government further argues that the complaint should be dismissed because it fails to state a claim. In considering whether a claim is stated, it is necessary at the outset to ascertain the limits upon this court's jurisdiction. It is established that federal courts have jurisdiction to determine whether the promulgation of the Code and System is within the authority of the Army. Dunmar v. Ailes, 348 F.2d 51 (D.C. Cir.1965), and to review questions of due process raised by their application. Andrews v. Knowlton, 509 F.2d at 903. But plaintiff's complaint goes further to challenge their morality and practicality, seeking, in effect, review of their substantive content. The Constitution does not, however, prescribe any particular disciplinary code for use at West Point. It is a matter that has traditionally been left to the discretion of the military. As this Circuit has cautioned: "the Academy's rigorous and exacting standards of discipline, behavior and personal decorum for cadets . . . should not be interfered with by the judiciary." Hagopian v. Knowlton, 470 F.2d 201, 204 (1972). Accordingly, except to the extent that an asserted constitutional right is implicated, this court does not have jurisdiction to adjudicate plaintiff's attack

upon the Honor Code and System.[4]

Plaintiff's major constitutional claim is that the promulgation of the Honor Code and System by the executive branch of government is an infringement upon the constitutional power of Congress "to make Rules for the Government and Regulation of the land and naval forces." Art. I, §8. He argues that pursuant to this power Congress has enacted a body of law concerning military discipline which has the effect of preempting the army-created Honor Code and System.

The power to regulate the armed forces is not delegated exclusively to Congress. The Constitution denominates the President commander in chief of the armed forces, and pursuant to that role his power "to establish rules and regulations for the government of the army is undoubted." United States v. Eliason, 41 U.S. 291, 301, 10 L.Ed. 968, 972 (1842). So long as the military rules prescribed by the President are not inconsistent with Congressional statutes,

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[4] Even when a constitutional violation is claimed, "(o)rderly government requires us to tread lightly on the military domain, with scrupulous regard for the power and authority of the military establishment to govern its own affairs within the broad confines of constitutional due process." Friedberg v. Resor, 453 F.2d 935,937 (2d Cir. 1971).

they are within the scope of his authority as commander in chief. United States v. Symonds, 120 U.S. 46, 49 , 30 L.Ed. 557,558 (1887).

In addition to the constitutional source, there is also a statutory basis for presidential regulation of the military. Congress has explicitly authorized the President to "prescribe regulations for the government of the Army." 10 U.S.C. §3061. And it has delegated to the Secretary of the Army responsibility for the "training . . . preparedness, and effectiveness of the Army" and the power to prescribe regulations to carry out these functions. 10 U.S.C. §3012.

Pursuant to the constitutional role of the President and statutory authorization, the Secretary of the Army promulgated Army Regulation 12.14 stating the Cadet Honor Code and the rule that a cadet who violates it shall be separated from the Military Academy. The procedure by which a suspected violator is brought before a Board of Officers, and its finding forwarded to higher authorities is outlined in 16.03. To be sure, no mention is made in army regulations of the Cadet Honor Committee. But in essence, the Committee's role with respect to Honor Code violations is entirely investigative. As a means of encouraging self-discipline, without ceding to it any authority to make final adjudications,[5]

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[5] See the discussion in Andrews v. Knowlton, 509 F.2d 898; and Gaines v. Hoffman, 75 Civ.5120(S.D.N.Y. Jan.12,1976), aff'd without opinion, No.76-6014(2d Cir.,Mar.15, 1976). Attacks upon the Honor Committee's functioning tend to indulge in the dubious assumption that it is intended to perform a judicial function.

the Academy has assigned it the function of identifying suspected violators. Such a limited role does not require formal written sanction.

There is a heavy presumption in favor of the validity of the Honor Code and System. Although a Code was first established at West Point in 1817, and cadet administration of it dates back to 1923,[6] Congress has taken no steps to resist this alleged usurpation of its authority. And courts have upheld the Court and System against a variety of challenges to the Army's power to promulgate them. See e.g., Dunmar v. Ailes, 348 F.2d 51/ (D.C.Cir.1965); Andrews v. Knowlton, 367 F. Supp. 1263 (S.D.N.Y. 1973) aff'd 509 F.2d 898(2d Cir.), cert. denied, 423 U.S. 873 (1975).

Plaintiff has not alleged any specific inconsistency between the Honor Code or System and any laws passed by Congress. In fact, the procedures employed in enforcing the Code are designed to avoid conflict with the Congressionally enacted Uniform Code of Military Justice (UCMJ). When a serious offense is suspected, the Honor Committee is instructed to suspend inquiries until the offense has been investigated under military law. Honor Committee Procedures at 17. And under Army Regulation 16.03, the Superintendent has the discretion to direct that an accused violator of

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[6] M. Rose, A Prayer For Relief (1973) 15 n. 69.

the Code, whose alleged violation is also a breach of the UCMJ, be tried by court-martial instead of by a Board of Officers.

Plaintiff's preemption claim is based upon the theory that the laws enacted by Congress relating to military discipline are designed to be exhaustive. Thus, he urges that the only legal grounds for expulsion are a violation of the oath prescribed in 10 U.S.C. § 4346 (which includes obedience to the UCMJ), deficiencies in conduct and study as outlined in 10 U.S.C. §4351, and a violation of the hazing prohibition set forth in 10 U.S.C. §4352. He contends that the large number of offenses enumerated in the UCMJ, and the fact that it is made applicable to cadets, 10 U.S.C. §802(2), indicates that Congress did not intend that there be any non-statutory basis for expulsion from West Point.

Even accepting plaintiff's theory, the Honor Code and System could be justified as a means by which the Academy has chosen to identify, pursuant to 10 U.S.C. §4351, those cadets who are "deficient in conduct." However, it is unnecessary to rely upon this analysis because the preemption argument is without substance.

The argument comes down to the proposition that the prohibitions of the UCMJ, aimed largely at

violations of criminal law, are so sufficient and appropriate as standards of discipline and conduct in the special context of a military academy that it must be presumed that Congress intended that the executive branch promulgate no others. This presumption is far from compelling. As a leading critic of the Honor System acknowledged:

> it seems clear at the outset that the substantive proscriptions of the UCMJ cannot be deemed to preempt academy rulemaking. These institutions must serve broader functions than the mere maintenance of order among cadets. The prohibitions of the Uniform Code are not comprehensive enough to inculcate in cadets the sense of discipline and the intangible qualities which will be expected of them as military officers. Thus, the situation at the academies is one in which the exercise of the correlative rulemaking power of the Chief Executive has not been statutorily precluded. Rose, A Prayer for Relief, 21-22.

Were the plaintiff correct, the Secretary of the Army would be without authority to prescribe regulations of conduct adapted to the special circumstances and needs of the Academy. I decline to reach such a conclusion.

The various other arguments made against the Honor Code and System do not require extended discussion because they have been examined in prior cases. The argument that the sole penalty of expulsion is unconstitutionally severe has been considered and rejected by this Circuit. Andrews v.

Knowlton, 509 F. 2d at 908. The argument that the Code is unconstitutionally vague has been rejected by the District of Columbia Circuit. Dunmar v. Ailes, 348 F.2d at 55. Accord, Birdwell v. Schlesinger, 403 F. Supp. 710 (D. Col. 1975). And in any event, it is foreclosed by the Supreme Court's decision that the far vaguer prohibitions contained in the UCMJ are not unconstitutionally vague. Parker v. Levy, 417 U.S. 733 (1974).

Plaintiff also claims that he is a victim of selective prosecution and has been placed in double jeopardy. But both of these contentions require as a premise that a Cadet Honor Committee investigation and finding is analogous to a criminal trial and conviction. This Circuit has specifically held that due process safeguards do not apply at the Honor Committee level because the Committee is only a "charging body whose decisions had no effect other than to initiate de novo proceedings before a Board of Officers." Andrews v. Knowlton, 509 F.2d at 907. In addition, with respect to the selective prosecution claim, plaintiff does not make the necessary allegation that the discrimination directed against him was based upon impermissible considerations such as race or religion. United States v. Berrios, 501 F.2d 1207 (2d Cir. 1974).

Plaintiff urges that he be permitted an opportunity to engage in discovery because most of the materials relating to the Code and System are in the possession of the Academy. But he has not raised a claim upon which discovery could be based. Even accepting all his factual allegations, and even after giving him every benefit of the doubt in interpreting his complaint, he does not assert a cause of action upon which relief can be granted. No amount of discovery could remedy this fundamental deficiency. Accordingly, defendants' motion for summary judgment is granted.

It is so ordered.

September 2, 1976.

United States District Judge

Index No. Year 19 A 22

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CADET TIMOTHY D. RINGGOLD, et al

Plaintiffs,

vs

THE UNITED STATES OF AMERICA, et al,

Defendants

ORDER TO SHOW CAUSE

SILLER & GALIAN
Attorneys for Plaintiffs

Office and Post Office Address, Telephone
370 Lexington Avenue
Borough of Manhattan New York, N. Y. 10017
MUrray Hill 3-1043

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

Sir:— Please take notice

NOTICE OF ENTRY

that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for
settlement to the HON. one of the judges
of the within named court, at
on 19 at M.

Dated,

Yours, etc.

SILLER & GALIAN

Attorneys for

Office and Post Office Address
370 Lexington Avenue
Borough of Manhattan New York, N. Y. 10017

June 18, 1976

for the reasons set forth in my oral opinion on the record with respect to the application for Preliminary relief, and for the reasons set forth in my written opinion filed on the application for a 3 Judge Court, plaintiff's motion for a preliminary restraining order, for a temporary injunction and for the appointment of a 3 judge ct are denied.

So ordered.

U.S.D.J.

Copy received 6/21/76 12:30pm
Robert Seide
US Attys Office
By William Bonner AUSA

BEST COPY AVAILABLE

Cat 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CADET TIMOTHY D. RINGGOLD, et al., Plaintiffs,	76 Civ. 2442
-against-	MEMORANDUM AND ORDER
THE UNITED STATES OF AMERICA, et al., Defendants.	44386

OWEN, District Judge

Plaintiff, Timothy Ringgold, moves for the convocation of a three judge court on the theory that such a court is required to adjudicate the constitutionality of the West Point Honor Code. He invokes 28 U.S.C. § 2281,* a statute which only applies when the plaintiff seeks to enjoin a state law or an administrative body acting under state law.

Since state authorities have no involvement in this case, it appears that plaintiff intended to refer t

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* An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

28 U.S.C. § 2282* which requires the convocation of a three judge court when plaintiff seeks to enjoin, on constitutional grounds, the operation or execution of any Act of Congress. But in this case plaintiff has made no such demand. To the contrary, plaintiff seeks to have the Honor Code enjoined on the grounds, inter alia, that it is inconsistent with Acts of Congress, and has been promulgated without the requisite Congressional authorization.

It is well established that a three judge court should not be convened under § 2282 when the basic constitutional challenge is directed at an administrative regulation. See e.g., William Jameson & Co. v. Morgenthau, 307 U.S. 171 (1939); Sardino v. Fed. Reserve Bank, 361 F.2d 106 (2d Cir.), cert. denied, 385 U.S. 898 (1966). A single judge is empowered to adjudicate the constitutionality of such regulations, including those of the Army, Davis v. Secretary of the Army, 440 F.2d 817 (5th Cir. 1971)(per curiam), and of the various government academies.

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* An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

O'Neill v. Dent, 364 F. Supp. 565 (E.D.N.Y. 1973).

Accordingly, plaintiff's motion to convene a three judge court is denied.

So Ordered.

June 16, 1976.

United States District Judge

TRANSCRIPT OF ORAL DECISION OF
THE HONORABLE RICHARD OWEN,
DISTRICT JUDGE, RENDERED ON
JUNE 9, 1976

THE COURT: I am going to reserve decision on the government's motion to dismiss.

On the plaintiffs' request for a hearing, having vigorously questioned plaintiffs' counsel, I am not given any facts that I feel would require a hearing.

Therefore, I deny a hearing on this preliminary injunction.

Keeping in mind that the question before me today is whether or not I should appoint a Three Judge Court which as a Three Judge Court should consider the issues of preliminary injunction, I shall reserve decision upon the appointment of a Three Judge Court, but in the meantime, sitting as a single Judge, and turning to the issue of the preliminary injunction that is requested, the rule that is binding upon me is as follows:

"A preliminary injunction should issue only

upon a clear showing of either, one, probable success on the merits and possible irreparable injury, or, two, sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly towards the party requesting the preliminary relief." This is from Sonesta, 483 Fed. 2d. 247, Page 250.

I find that there is a substantial and serious question here of failure to exhaust administrative remedies.

I also find that plaintiff has not raised to the degree necessary, it seems to me, questions attacking the procedural due process that is accorded by the existing procedures at the Academy.

Certainly on these papers and on the argument presented to me with regard to two cadets, it is questionable that there is not a due process machinery.

On the affidavit of one of the cadets, it would appear that the machinery was not being properly operated, but that is a different question.

In any event, it seems to me that the procedural due process argument that is raised by the plaintiffs here has been completely undercut by the rulings of the Court of Appeals for the Second Circuit in Andrews v. Knolton, 509 Fed. 2d. 898.

Turning to the selective prosecution argument,

there is absolutely no showing before me on this record of any malice, ill-will, or anything else having to do with any selective prosecution, assuming even there is selective prosecution. Such cases as Berrios and the Lennon case in this district it seems to me dispose of that issue on this record.

Turning to the requirement for the Honor Code at a Military Academy, I find a wholly insufficient showing that the Honor Code is not the appropriate one at the United States Military Academy as Mr. Siller and I discussed at some length.

Further, the cases are many that the Army has considerable latitude as to its own internal system of justice, and I point to such authorities as Parker v. Levy, 417 US 733.

Turning finally to the question of irreparable injury, and again reviewing the Sonesta case which I quoted at the beginning, while there would appear to be a possibility of injury here, I do not find the balance of hardships tipping decidedly towards the party requesting the preliminary relief sought, and I find that particularly so in view of the fact that there are further hearings available for any aggrieved cadet before the Officer Board and then that Board thereafter being reviewable by I

understand the Superintendent of the Academy.

Consequently, the Sonesta test in my judgment not being met by any view, as a single Judge, the preliminary injunction that is requested in the order to show cause that I signed on June 2nd of 1976 is denied.

MR. BRONNER: Your Honor, do those constitute the Court's findings of fact and conclusions of law?

THE COURT: My findings of fact and conclusions of law.

oOo

MEMORANDUM

SINCE DEFENDANT, FOR PURPOSES OF THE MOTION FOR A PRELIMINARY INJUNCTION ARE PREPARED TO ACCEPT PLAINTIFFS' VERSION OF THE FACTS, DISCOVERY IS NOT APPARENTLY NEEDED. I SHALL HEAR FURTHER ON THIS POINT ON THE ARGUMENT. PENDING THE HEARING THE Attached subpoenas ARE STAYED IN THEIR ENTIRETY.

SO ORDERED:

/s/ RICHARDOOWEN
U.S.D.J.

1:00 P.M.
6/7/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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CADET TIMOTHY D. RINGGOLD, Individually and on behalf of all other similarly situated cadets of the U.S. Military Academy,.

Plaintiffs,

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Dept. of the Army, LT. GEN. SIDNEY B. BERRY, as Supt. of the U.S.M.A., BRIG. GEN. WALTER F. ULMER, Commandant of Cadets, U.S.M.A., CADET WILLIAM ANDERSEN, as Outgoing Chairman of the U.S.M.A. Honor Code Board Committee, and CADET MICHAEL IVY, as Incoming Chairman of the U.S.M.A. Honor Code Board Committee,

Defendants.
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Index # 76 Civ. 2442

ORDER TO SHOW CAUSE appointing a 3 Judge Court and Injunctive Relief and Temporary restraining order

Upon the annexed affidavits of Timothy D. Ringgold, Mark Anthony English, ~~Steven~~ plaintiff Scott Hutton and Garrett Paul Keane, sworn to on the 31st day of May, 1976, and the annexed affidavit of Edward G. Galian, Esq., sworn to on the 28th day of May, 1976, and the Summons & Complaint herein, and due deliberation having been had thereon,

Now, on motion of Siller & Galian, Esqs., attorneys for plaintiffs, it is

Ordered that the defendants hereinabove named show cause before a Judge of the United States District Court of the Southern District of New York to be held at the U.S. Courthouse thereof, at Foley Square, City, County and State of New York, on the 9th day of June, 1976, at 10:30 o'clock in the forenoon of that day in room # 301, or as soon thereafter as counsel can be heard why, pursuant to 28 U.S.C., Sections 2281 and 2284, a three (3) Judge Court should not be appointed and a preliminary injunction should not issue :

1) Enjoining the defendants in their representative capacity from in any manner interrupting the regular academic or military education and training heretofore furnished by the U.S. Military Academy as heretofore provided the plaintiffs, pending the trial of this action and the further order of this court;

2) Directing defendants to cease and desist from conducting any and all trials, hearings, investigations, inquiries and other activities, and authorizing, directing or performing any order, action or course of conduct in connection with the Cadet Honor Code and its implementation or enforcement of a plan or design for expelling or disciplining or interrupting the regular academic and military education and training heretofore furnished by the U.S. Military Academy in accordance with directives heretofore issued by defendants pending the trial

of this action and the further orders of this court;

3) Directing the defendants to cease and desist from the further and continued practice and use of the "Cadet Honor Code" and Cadet Honor Code Committee Boards;

4) Directing the defendants to reinstate to their prior rank, position and class forthwith, all plaintiff-cadets who were adjudged "guilty of Honor Code violations";

5) Directing that defendants rescind and reject all resignations of cadets who heretofore submitted same in response to charges of violations of the Cadet Honor Code; and to immediately reinstate said cadets to the Cadet Corps; and

6) Directing defendants to expunge from the service records of all cadets, any and all references to Honor Code violations.

In the meantime, and pending the hearing of this motion, it is

~~Ordered that defendants be and they hereby are stayed~~ and enjoined

(1) From in any manner interrupting the regular academic or military education and training heretofore furnished by the U.S. Military Academy as heretofore provided the plaintiffs;

~~(2) From conducting any and all trials, hearings,~~ investigations, inquiries and other activities, and authorizing, directing or performing any order, action or course of conduct in connection with the Cadet Honor Code and its implementation or enforcement;

(3) From continued practice and use of Cadet Honor Code Committee Boards;

(4) And they are directed to reinstate to their prior rank, position and class forthwith, all plaintiff-cadets ~~who were adjudged "guilty of Honor Code violations".~~

Ordered, that Personal service of this Order To Show Cause, together with the papers hereto attached, be served on the defendants other attorneys, including the U.S. Attorney, on or before the 3rd day of June, 1976, at 1:00 o'clock, P.M., be deened good and sufficient service.

Dated: New York, N.Y.
June 2, 1976

/s/ Richard Owen
Judge, United States District Court.

Issued at 12:35 P.M.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

CADET TIMOTHY D. RINGGOLD, Individually and on behalf of all other similarly situated cadets of the U.S. Military Academy,

Plaintiffs,

AFFIDAVIT

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Dept. of the Army, LT. GEN. SIDNEY B. BERRY, as Supt. of the U.S.M.A., BRIG. GEN. WALTER F. ULMER, Commandant of Cadets, U.S.M.A., CADET WILLIAM ANDERSEN, as Outgoing Chairman of the U.S.M.A. Honor Code Board Committee, and CADET MICHAEL IVY, as Incoming Chairman of the U.S.M.A. Honor Code Board Committee,

Defendants.
----------X

State of New York)
County of) ss. :

TIMOTHY D. RINGGOLD, being duly sworn, deposes and says:

1. I am a cadet duly appointed and presently attached to the Junior Class at the U.S.M.A. I am presently completing my third year of studies at West Point.

2. Deponent herewith makes this affidavit in support of the motion herein for a preliminary injunction and stay prohibiting the commencement and continuance of Officer Appeal Board

hearings and other disciplinary measures pursuant to and in furtherance of the implementation of the "Cadet Honor Code."

3. Deponent was chosen at random, together with four (4) other members of the Junior Class, and five (5) members of the Sophomore Class, to attend a meeting with the Under Secretary of the Army, the Hon. Norman Augustine. The meeting took place at the U.S. Military Academy in mid-April, 1976. The purpose of the meeting was to exchange views and opinions concerning the Honor Code.

4. At this meeting, Under Secretary Augustine, in the absence of any military personnel, and in apparent confidence, put several questions to the ten cadets. We were asked what we thought about the "Honor Code." Deponent, under the assumption that the conversation and interview was privileged, told the Under Secretary of the Army that the "cheating scandal" at the U.S. Military Academy was "more widespread" than officials had acknowledged, and that the 49 cadets found "guilty" of Honor Code violations, to date, had done no more nor less than every other cadet had done at some time in their cadet career at West Point.

5. In spite of the privileged nature of said interview with Under Secretary Augustine, deponent was summoned several days later to a meeting with Cadet William Andersen, the outgoing Chairman of the Cadet Honor Committee. Cadet Andersen inquired of deponent, "If I knew of any cadets who had

cheated and had not been investigated." Deponent refused to answer on the grounds that an affirmative reply would be a violation of the Honor Code (toleration) and a negative reply would also be a violation (lying).

6. The Cadet Honor Code stems from the origins of the military academy some 174 years ago and it states that "a cadet will not lie, steal or cheat, or tolerate those who do."

7. Cadet William Andersen informed deponent that he was not being investigated and could feel free to answer. Cadet Andersen had six (6) signed statements in his possession against deponent.

8. As a consequence of the "privileged" interview with Under Secretary Augustine, and deponent's interview with Cadet Andersen, deponent was charged with "toleration" as an Honor Code violation on May ~~11~~ 10, 1976. Deponent was ordered to "transient barracks," where he remained for ~~two and one-half~~ six days.

9. On May 13th, 1976, however, deponent was informed by ~~Capt~~ Col Hal Rhynne, Deputy Commandant of Cadets, that all charges were dropped against him, and that he was being returned to the cadet corps in good standing.

10. On May 26, 1976, deponent was informed by Brig. Gen. Walter F. Ulmer that he had no choice but to recommend that deponent appear before an Officer Appeal Board for violating the Honor Code, because deponent had requested the reason and basis for his first acquittal.

11. This second charge against deponent of Honor Code violation, "toleration," by Gen. Ulmer, is the same charge that deponent was acquitted of on May 13, 1976.

12. Deponent, as a consequence of defending himself against the unjust charges brought against him, has compiled an extensive list of cadets who were involved in "cheatings" whose cases were overlooked for various reasons for the purposes of demonstrating the arbitrary and unjust methods, procedures and tactics used in the enforcement of the Cadet Honor Code.

13. Deponent has evidence of the arbitrary and improper manner that the Cadet Honor Committee performed its duties; of how members of the Honor Boards in certain cases affirmatively conspired to conceal and cover up violations of the Cadet Honor Code; of how in consequence of the esoteric nature of the Cadet Honor Code, the pragmatic execution thereof by the Cadet Honor Boards is capricious, arbitrary and of how it results in grave injustices to the legal rights and constitutional guarantees of the individual cadets, to wit : that only a small percentage of the total known number of cadets who actually "cheated" on a take-home electrical engineering test have been charged, prosecuted and found "guilty" of violating the honor code. Deponent estimates that upwards of 300 cadets, members of the Class of 1977, violated the Honor Code, and yet the Cadet Honor Committees arbitrarily and in the exercise of favoritism selected cadets to be charged with Cadet Code violations. This clearly constitutes a deprivation of due process and equal protection guaranteed by the U.S.

Constitution. The precise scope and extent of cheating at West Point has been deliberately concealed so as to allow the belief to prevail that the Honor Code is still a workable principal,which it is not. It is, in fact, counter-productive. The Honor Code actually fosters and gives rise to the baser instincts of a cadet whose sole goal is to survive the system of injustice under the Honor Code. Most cadets view it as merely one more obstacle to overcome in order to graduate. The Cadet Honor Code clearly does not instill in a cadet the highest possible sense of personal integrity. The contrary is closer to the truth. The "toleration" clause of the Cadet Honor Code in actuality suppresses the truth. Truth and justice is possible only if this court assumes jurisdiction of this controversy and analyzes the evidence concerning the unjust imposition of unworkable procedures for implementation of an Honor Code which engenders dishonor.

The integrity of your deponent, as well as the entire Class of 1977 and the Corps of Cadets, has been tarnished and will not be vindicated until such time as the so-called Honor Code has been eliminated and its unjust implementation has been permanently enjoined.

WHEREFORE, deponent prays that the relief sought in the annexed order to show cause be granted in its entirety, together with such other relief as this Court may deem just and proper.

Timothy D. Ringgold

Sworn to before me this
day of May, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

CADET TIMOTHY D. RINGGOLD, Individually and on behalf of all other similarly situated cadets of the U.S. Military Academy,

Plaintiffs,

-against-

AFFIDAVIT

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Dept. of the Army, LT. GEN. SIDNEY B. BERRY, as Supt. of the U.S.M.A., BRIG. GEN. WALTER F. ULMER, Commandant of Cadets, U.S.M.A., CADET WILLIAM ANDERSEN, as Outgoing Chairman of the U.S.M.A. Honor Code Committee, and CADET MICHAEL IVY, as Incoming Chairman of the U.S.M.A. Honor Board Code Committee,

Defendants.

----------X

State of New York)
County of) ss. :

MARK ANTHONY ENGLISH, being duly sworn, deposes and says :

1. I am a Third Year cadet at the U.S. Military Academy, West Point, N.Y. (hereinafter referred to as West Point) and make this affidavit in support of the annexed motion for a preliminary injunction and temporary restraining order.

2. I have been tried and adjudged "guilty" of cheating on an electrical engineering take-home examination by a cadet honor board. I repudiate and deny the allegations against me. Further, I urge this court to find that the "Cadet Honor Code" is an illegally conceived standard of behavior, ambiguous and arbitrary in its interpretation, and unequally applied and implemented.

3. I have, accordingly, been denied the protection afforded me under the due process and equal protection of law provisions of the Constitution of the U.S.A.

4. On April 6, 1976, I was directed to report to a three cadet sub-committee to answer to charges that I had cheated on a computer problem assigned to my electrical engineering class. I did so and, after interrogation, was informed that I would be required to attend a full Honor Board hearing.

5. On April 9, 1976, I forwarded a request to Cadet William Andersen, chairman of the Honor Committee for the Class of 1976, to disclose to me all pertinent evidence that would be submitted against me at the Cadet Honor Board hearing.

6. On April 10, 1976, I was notified by Cadet William Andersen that I had a right to look at my own test paper only, that I could inspect no other material, test paper or evidence whatsoever.

7. On April 13, 1976, my Honor Board hearing was convened. Together with seven other cadets accused of honor code

violations, I was directed to remain in a small room to await my turn before the honor board. We were instructed not to talk to each other. Except for meal times and our night recess, we remained in the room together for two days.

8. Each accused cadet was entitled to a cadet "advisor" who presumably was to assist him in defending himself. My advisor informed me after approximately one-half of the hearing against me had been concluded, that he had never seen an honor board hearing such as mine. He said he was ashamed of it. He subsequently submitted a written statement, expressing the same sentiments, to the West Point Judge Advocate General's office.

9. Numerous apparent improprieties occurred while my honor board was in session : (1) while we eight cadets were awaiting our respective hearings in the "holding" room, the president of the honor board came in and said that we had to prove our innocence; (2) during the taking of testimony, although accused cadets were allowed through their advisor to submit questions in writing, to be put to witnesses, only two of the four questions that I submitted were put to the witness; (3) while I was being interrogated, the tape recording mechanism was periodically turned off at the pleasure of members of the honor board; (4) while my defense witnesses were testifying, members of the honor board were periodically dozing off, were otherwise not listening or were smerking and snickering; (5) my advisor informed me that during the honor board's deliberation period, many of the board members commented that my case was a "classic" or "open and shut" case

and they made no effort to discuss the substance of the evidence or to analyze the evidence presented.

10. I further state categorically that although I was charged and prosecuted for an alleged honor code violation, numerous other cadets known to me to have cheated in the same computer problem or tolerated the same by others were either not charged, or were charged and acquitted; that such favorable treatment did not bear upon the merits of their respective cases, but was the product of favoritism, personal friendship or other bias. I have furnished a list of names of a number of these "cleared cadets" to the office of the West Point Judge Advocate General.

11. The "cadet honor code" constitutes an unworkable, hypocritical and demeaning standard of conduct which is not capable of fair and equal interpretation and enforcement. The cadet corps consists of citizens from all walks of life and constitutes a cross-section of our modern society. As such, the standards of such society are part and parcel of the standards of a West Point Cadet. Our religious, educational and home environments have taught us not to lie and not to cheat. The Cadet Honor Code requirement that cadets "shall not tolerate" the former improprieties, however, imposes upon the individual cadet the often intolerable and unfair burden and duty to inform on his closest comrade. More often than not, since the subject matter involved is petty, and the penalty for "Code" violation so severe (expulsion) that toleration is the rule, and not the exception. Thus, imple-

mentation of the code is a hypocritical pretense. Those who are ultimately found guilty of honor code violations are victims of its unequal application. The conscience of the tolerator or non-tolerator, whichever may be the case, then becomes the standard by which the honor code is administered.

WHEREFORE, I respectfully request that the annexed motion for injunction be granted in its entirety.

/S/
Mark Anthony English

Sworn to before me this
31 day of May, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

CADET TIMOTHY D. RINGGOLD, Individually and on behalf of all other similarly situated cadets of the U.S. Military Academy,

Plaintiffs,

AFFIDAVIT

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Dept. of the Army, LT. GEN. SIDNEY B. BERRY, as Supt. of the U.S.M.A., BRIG. GEN. WALTER F. ULMER, Commandant of Cadets, U.S.M.A., CADET WILLIAM ANDERSEN, as Outgoing Chairman of the U.S.M.A. Honor Board Code Committee, and CADET MICHAEL IVY, as Incoming Chairman of the U.S.M.A. Honor Board Code Committee,

Defendants.

----------X

State of New York)
County of) ss. :

STEVEN ~~STEVEN~~ SCOTT HUTTON, being duly sworn, deposes and says:

1. I am a cadet duly appointed and presently stationed at the United States Military Academy, West Point, New York.

2. I am 22 years of age and presently completing my third year of studies.

3. I submit this affidavit in support of the annexed motion for a preliminary injunction. I hereby categorically state

that I have been and continue to be denied my constitutional guarantees including, but not limited to, due process and the equal protection of the laws. Continuing illegal misapplication and improper implementation of the notorious "Cadet Honor Code" has been imposed upon me and the general cadet population of the U.S. Military Academy by intransigent and outdated attitudes and policies cloaked in the dust and debris of obsolete and unworkable practices of yore.

4. During my West Point career, I have been an assistant athletic sergeant, a squad leader, and in September, 1975, I was elected "Company Honor Representative," and subsequently I was selected as an assistant regimental investigating officer. In addition, my academic standing has been satisfactory.

5. The duties of a "company honor representative" include the education of the cadets upon the subject of the "Honor System." We inform the cadets of the decisions of Cadet Honor Boards and, if selected, sit on "sub committees" and "Cadet Honor Boards."

6. The duties of a regimental investigating officer include the gathering of information concerning allegations of honor code violation.

7. During my tenure as a "Company Honor Representative," I have participated in approximately 5 Cadet Honor Board hearings. Prior to such participation, I had attended approxi-

mately 4 Cadet Honor Board hearings as a non-voting member for instructional purposes.

8. On April 14, 1976, I was confronted at lunch time by the chairman of the 1977 Honor Committee, Michael Ivy. He directed me to meet with him in his room immediately after lunch, but would not answer my questions concerning the reason for such meeting. I promptly reported to his room where he and the chairman of the 1976 Honor Committee, Cadet William Andersen, were awaiting me. They commenced interrogating me with general questions on my whereabouts and activities on the prior evening, April 13th. They asked me if I was in the Company E-1 area. I said that I had been there visiting a high school friend who had been charged with "cheating" in violation of the cadet honor code.

They asked me if I knew honor representative Craig McCaffrey of Company E-1 and I responded affirmatively. They asked me if I knew honor representative Bobby Horton from Company B-4 and I answered affirmatively. They asked me if I had been attempting to influence the outcome of any Honor Boards and I denied the allegation.

They then read to me parts of a statement of another Honor Representative, Cadet Jack Keaton, accusing me of asking him for "help" on certain honor boards of which he was a member. I was asked to comment on these accusations and I was not able to give any adequate explanation for certain terms imputed

to me in these statements. Nevertheless, I was told that I was not under investigation, but that I should be careful of what I said.

I was asked what I meant by asking for "help." I replied that maybe I just wanted him to be fair.

They than asked me to prepare a written statement which I did. I denied any attempts to "fix" a Cadet Honor Board. The statement was very vague since I did not fully understand the situation confronting me.

I was then informed that the inquiry would be continued at a cadet sub-committee for further review.

I then approached Captain Foster, in the Judge Advocate General's office and informed him I had a problem and that I needed an attorney because it appeared to me that I was the object of a personal vendetta. He said I didn't need a lawyer at that time since the matter might be dropped.

One night about a week later after "taps," I received a phone call from Cadet Carl Swanson, Vice-Chairman for Investigations with the Class of 1977 Honor Committee, informing me that on the following evening I was required to appear before a subcommittee. Although the usual procedure was to serve a cadet accused of honor violations with written specifications of the charges against him, I received nothing but this phone call.

I subsequently appeared before the sub-committee of 3 cadets and informed them that I chose to remain silent due to the nature of allegations against me.

In due course, on April 23, 1976, my Cadet Honor Board hearing was assembled. The allegation against me was "quibbling" (giving evasive answers). I read a statement prepared with the assistance of Captain Foster wherein I objected to the nature of the allegations, denied the allegations and informed the board that I would not testify further.

The Board then continued the hearing in my presence. Several witnesses were called. Cadet Jack Keaton testified that I had asked him to vote "not guilty" on an Honor Board he had been assigned to. His roommate testified that I had asked him for "help" on an Honor Board that he was sitting on, although he was not sure what "help" I was asking for. Cadet William Andersen testified that I gave him evasive answers when I was confronted with the written statements of Cadet Jack Keaton. Cadet Michael Ivy also testified that I was very evasive when I was asked questions concerning the accusation of Jack Keaton; that I was nervous, but admitted that possibly I did not understand all the questions I had been asked since I asked that these be repeated again and again.

There were no other witnesses and the Board went into deliberation in my absence.

Thereafter, I was directed to return to the hearing room and the decision was read. I had been found"guilty" of "quibbling" when I had answered the questions of Cadet William Andersen and Cadet Michael Ivy on April 14, 1976.

I was immediately placed in the custody of the president of the Honor Board. He escorted me to the central guard room where I was to see the officer in charge. A few minutes later, the officer in charge informed me I would be moved into "transient barracks" to await further action. I returned to my company under guard, picked up my toilet articles, blanket and pillow and returned to "transient barracks" where I remained overnight.

The next morning, at 8:00 A.M., Colonel Cook explained to me my Miranda rights.

I remained in the transient barracks for several days and finally was transferred to Company G-3 barracks where I remain to date awaiting a hearing before an officer's hearing board.

My purpose in setting forth the details of my case is not to ask this court to reverse the decision that I was guilty of quibbling. It is my firm belief that the entire system of Honor Code violation, investigation and punishment is faulty; that the review and enforcement procedure lacks the necessary safeguards to protect all cadets; and that "expulsion" for its violation is an illegal remedy not authorized under the applicable federal statutes and constitution.

9. As a 3rd-year cadet, now fully conversant with the "Cadet Honor Code," its meaning, interpretation and implementation, I can state without equivocation, that the "Code"

is a redundancy in so far as the prohibition of lying and cheating is concerned and an instrument encouraging derogation of personal relationships and confidences, and divisive among the cadet corps as to the non-toleration clause therein.

In short, the so-called "Honor Code" should be eliminated forthwith. It cannot and should not be eulogized and utilized as a basis for expulsion for minor or petty violations of its broad and simplistic language. As a matter of fact, of my own experience and observation, I am able to affirm that, without exception, every cadet at one time or another during his West Point career has violated the Honor Code; that its terms are vague; that its application and enforcement is arbitrary; and that equal treatment may not be accorded to all cadets under any circumstances.

WHEREFORE, I respectfully urge this court to grant the instant motion for injunctions in its entirety.

/s/
Steven Scott Hutton

Sworn to before me this
21 day of May , 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

CADET TIMOTHY D. RINGGOLD, Individually and on behalf of all other similarly situated cadets of the U.S. Military Academy.

Plaintiffs, AFFIDAVIT

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, As Secretary of the Dept. of the Army, Lt. Gen. SIDNEY S. BERRY, as Supt. of the U.S.M.A., Brig. Gen. Walter F. ULMER, Commandant of Cadets., U.S.M.A, CADET WILLIAM ANDERSON as outgoing chairman of the U.S.M.A. Honor Code Board Committee, and CADET MICHAEL IVY, as incoming Chairman of the U.S.M.A. Honor Code Board Committee,

Defendants

----------X

State of New York) ss.:
County of)

GARRETT PAUL KEANE, being duly sworn, deposes and says:

1. I am 23 years of age and a 3rd year cadet at the U.S. Military Academy at West Point, New York (hereinafter referred to as "West Point")

2. I submit this affidavit in support of the annexed motion for a preliminary injunction.

3. Upon my graduation of high school I enlisted in the U.S. Army and remained there for 11 months: at that

time I attended the U.S. Military Academy Prep School for 10 months and then entered the Military Academy in July 1973.

4. Since that date, I have been pursuing the basic West Point curriculum of studies which leads to the Degree of Bachelor of Science, and have maintained a satisfactory academic standing to date. In addition, I have served as an assistant athletic sergeant, equivalent to the rank of cadet corporal. My last detail of the current year was that of cadet corporal as a squad leader. I am at present the brigade ticket representative in charge of selling tickets for the concerts at West Point.

5. Early in March, my class was given an electrical engineering problem to take home. The problem was of a building block nature, covering all of the material learned to date. It is an application of that material, how the power taken from a loss circuit and converted down to a D. C. element to be used by a calculator. It was about four pages long and took from two to five hours to complete. We were permitted to use our own textbooks and our own written work and anything but assistance from another cadet.

6. I finished the problem, and placed it in my physics notebooks and on the following morning I turned the problem in to Lt. Col. Frieze, my electrical engineering professor.

7. During the last week in March before I took my Spring Leave, I was called into Lt. Col. Frieze's office. I was asked who my roommate was. I answered. I was asked if I did my own work. I said I had.

Lt. Col. Frieze then confronted me with another test paper and asked why my paper and the other paper were similar. The other paper had written across the back, "To Whom it May Concern, I have had help in completing this special problem from my roommate" and was signed by Cadet Paul Nardi. I answered that I really did not know. He asked me if we had worked on the test together. I answered that we had not. He then said he would be in touch with me again and he excused me. I confronted Cadet Nardi who was not my roommate, I asked him if he had copied my paper. Cadet Nardi said he might have, believing my paper to be that of his roommate. I then went back to Lt. Col. Frieze and told him that Cadet Nardi may have copied my paper without my knowing it. Lt. Col. Frieze said that if he had further questions, he would communicate with me.

When I returned from Spring Leave on April 7, 1976 and during dinner I was approaced in the mess hall by a Cadet Henry of the Honor Committee and directed to report to a room directly after dinner. Cadet Henry

came later to my table and together with two or three other cadets escorted us to the room. When we reached the room, there were approximately ten other cadets already there who said they had been there all day long. After about 15 minutes we were informed by an Honor sub-Committeeman that we were under investigation for Honor Code Violations in connection with the electrical engineering problem.

We were told to write a statement in our own behalf of our knowledge concerning the allegations of Honor Code Violations. I wrote a review of my schedule of work in connection with my completing the electrical engineering problem and I signed it. We were told to hold our statements.

In a few minutes, I was escorted into another room where 3 cadets were sitting. They commenced asking me questions about the problem and if we had help with it. I read my written statement wherein I stated I had done the problem alone, and had received no assistance.

I was then asked if I could explain certain segments of the problem to the 3 cadets. I said no I couldn't because it was the first time I had seen the

problem in 3 weeks, I had just come back from Spring Leave. I had purchased a motorcycle and my mind had been on many things not connected with the electrical engineering problem. In addition, I didn't have my text book and notes available to me in the room.

I was then told that on the following day I would be informed if I would have to appear before a full Honor Board Hearing.

On the following day I was so informed that my case had been referred for an Honor Board Hearing. I was then handed a paper containing allegations that I had violated the Honor Code by having assistance in completing the written electrical engineering problem.

After several days, I was told of the date and time and place of the Board Hearing.

The following week at 2:00 P.M. April 13, 1976, I was told to wait around. Eventually at about 8:15 p.m. the Board Hearing commenced. Cadets Paul Nardi and Gerald Ousley were also tried by the same board at the same hearing.

The first witness was Lt. Col. Frieze who testified about the meeting with me, and with Cadet Paul Nardi and that he had compared Cadet Nardi's paper with the paper of Cadet Gerald Ousley who was Cadet Nardi's roommate, and

my paper and that all three were similar. He also testified I had the ability to complete the problem without assistance.

The next witness was Major Barbour, Mr. Gerald Ousley's professor. His testimony was similar to that of Lt. Col. Frieze.

Then a cadet who had been on the sub-committee testified as to what I said at the sub-committee hearing a week earlier. His testimony was not clear since he had reviewed a number of cases and had a poor recollection of my case, but said he remembered that I did not explain how I had done the electrical engineering problem.

The next morning at 8 A.M., I testified before the full Honor Board. The president of the Board began the questioning then the other members of the board asked questions. I reviewed the events leading up to the Board Meeting, then I was asked a number of questions concerning the electrical engineering problem itself; to explain the process and answers contained therein. Although I had not been informed to bring my textbook and other subject notes, I had done so. I was able to explain the problem with the exception of two minor processes which the members of the board repititiously continued to question me on. Had I forgotten to bring my textbook and notes, I would not have been able to complete or explain the problem to the Board Members. After a number of witnesses

had testified inconclusively, the Hearing was recessed for lunch.

At 1:00 P.M. the Board convened but my advisor Cadet Hutton who had been present during the prior hearings, was not available and I was compelled to proceed without my advisor.

I was extensively interrogated that afternoon by various members of the Board, while Cadets Nardi and Ousley were present, and then they too were interrogated in my presence when this concluded, the Board went into deliberations.

After deliberations, I was found guilty of cheating on the examination.

I was required to move to another company, Company A-1. In the process, I was unable to study. In addition since moving to Company A-1, I have been subject to a degree of the "silent" treatment, although this is now barred at West Point. I am currently awaiting a review of the Cadet Honor Board conviction by the Officer Board Hearing.

My purpose in detailing the events and proceedings concerning the allegation of my having violated the Honor Code is to indicate to the court that the alleged Honor Code Violations is ambiguous; the means and manner

of investigation and review of alleged Honor Code violations by a sub-committee of 3 cadets and full board hearings constitutes the violation of every legal and constitutional rights, including deprivation of due process and equal protection: The system of cadet self-government is clearly faulty by reason of favoritism; bias and prejudice which play a major role in the acquittal or conviction of a cadet; once charged by an investigating sub-Committee, a cadet is automatically assumed guilty unless he proves himself innocent; He has no right to counsel at the full Honor Board Hearing; He has no right to cross-examination; His silences may be used against him; Notice of a Board Hearing is minimal. Pre-hearing preparation is unheard of.

The penalty for an Honor Code Violation is the same in all cases: Expulsion. This is true whether the violation consists of the unauthorized borrowing of a pair of socks or stealing a car.

Wherefore I respectfully request that the court grant the annexed motion for injunction.

Garrett Paul Keane

Swotn to before me this
31st day of May, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

CADET TIMOTHY D. RINGGOLD, Individually and on behalf of all other similarly situated cadets of the U.S. Military Academy,

Plaintiffs,

AFFIDAVIT

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Dept. of the Army, LT. GEN. SIDNEY B. BERRY, as Supt. of the U.S.M.A., BRIG. GEN. WALTER F. ULMER, Commandant of Cadets, U.S.M.A., CADET WILLIAM ANDERSEN, as Outgoing Chairman of the U.S.M.A. Honor Code Board Committee, and CADET MICHAEL IVY, as Incoming Chairman of the U.S.M.A. Honor Code Board Committee,

Defendants.
----------X

State of New York)
County of) ss. :

EDWARD G. GALIAN, being duly sworn, deposes and says :

I am a member of the firm of Siller & Galian, Esqs., attorney for the plaintiffs herein, fully familiar with all of the facts and circumstances concerning this action and make this affidavit in support of the annexed order to show cause for a preliminary injunction and restraining order,

The relief herein requested is extraordinary, yet necessary, to assure the survival of the United States Military Academy as one of the foremost institutions for the education and training of the military leadership of the United States of America. No less important, such relief is dictated by the need to protect the basic legal and constitutional rights of the thousands of cadets in attendance at this institution, including those rights guaranteed under the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution.

This action is occasioned by the indiscriminate, arbitrary and unequal implementation of a so-called "Cadet Honor Code" which provides that "a cadet will not lie, cheat or steal or tolerate those who do." The only penalty for violation is expulsion.

It has been widely reported (Exhibits "A" - "C") and subsequently confirmed by this deponent, that although only 49 cadets at West Point have been found "guilty" of cheating upon a take-home electrical engineering examination by Cadet Honor Boards, literally hundreds of other cadets were similarly implicated and guilty but for a variety of reasons, either avoided prosecution or were tried by biased "Cadet Honor Boards" and acquitted. A Cadet Honor Board consists of 13 cadets, a non-voting president and 12 voting members. An accused needs only one vote for acquittal. A single friend on the board assures clearance of any charge.

It is hereby submitted that the "Cadet Honor Code", itself, as well as its implementation, constitutes an invalid and illegal basis for expulsion of West Point cadets, and it should be banned, in its entirety, for all purposes, forthwith.

In so far as is concerned the portion thereof which prohibits lying, cheating and stealing, it constitutes a redundancy. Since time immemorial, all right-thinking citizens of civilized societies abhor such conduct. Certainly, the one most carefully screened group of prospective military leaders that our nation can muster needs no reaffirmation of such basic principles of conduct and behavior.

As for the proviso that West Point's cadets shall not tolerate cheating, lying and stealing, the code of honor derogates the necessary and desirable human qualities of self-respect, dignity and loyalty. It imposes upon the cadet the unfamiliar, unsought and unwanted roles of spy and informer, against even his most cherished friends and comrades. Can anything be more despicable ? Particularly, where the offense is of minor importance and the penalty is so severe.

The morality of cheating is not in issue. We address ourselves instead to the morality of indoctrinating our fledgling officer staff that it is their sworn duty to spy and inform upon their peers.

There are further compelling reasons why the Cadet Honor Code should be barred from the United States Military Aca-

demy. By Congressional act, there are only three bases for expulsion of cadets from West Point. First, pursuant to F.C.A 10, Section 4346, the newly appointed cadet must take an oath of allegiance (Exhibit "D"). Thus presumably if he violates any of its provisions, he may be expelled.

Second, a cadet may be expelled for deficiencies in conduct or studies under F.C.A. 10, Section 4351 (Exhibit "E").

Finally, violation of "hazing" prohibitions, under F.C.A. 10, Section 4352, is a legal basis for expulsion (Exhibit "F").

These statutory guidelines are the sole and exclusive grounds for expulsion. They may not be substituted or superseded by an arbitrarily imposed "Cadet Honor Code" which improperly delegates the power to expel cadets by reference of such authority to kangaroo Honor Boards composed of uninitiated and unsophisticated cadets who have no knowledge or concern for the protection of accused's legal and constitutional rights, but rather are in a large measure imbued by a sense of their own importance.

An excellent example of the curious result that one such kangaroo Honor Board can achieve may be seen in the case of Cadet Steven Scott Hutton, whose affidavit is annexed hereto. He had been the subject of an investigation centering upon "fixing" of an honor board and during questioning by certain apparently omnipotent Honor Committee cadet officers, he denied the charges

but in apparently equivocal terms. Consequently, while there was no evidence that he had "fixed" an honor board, he was accused, tried and found guilty of "quibbling" as a violation of the Cadet Honor Code. Quibbling, evidently, is giving evasive answers to investigating honor representatives. The penalty, of course, is expulsion, should the conviction be confirmed by the officer board which is required to review all Honor Board convictions. It is a known fact that the percentage of confirmations of Cadet Honor Board convictions is very high, upon information and belief exceeding sixty percent (60%).

The reason why this Court is urged to grant a preliminary injunction and temporary restraining order is that irreparable injury will be done to the cadet corps, the U.S. Military Academy and, in particular, those 49 cadets who are scheduled for officer board hearings on their appeals from cadet honor board convictions which are scheduled to commence on May 28, 1976. Furthermore, as of the date of this affidavit, an order was issued by the office of the Superintendent of West Point directing that all second class cadets (Third Year) shall remain at the Academy beyond the normal spring recess date for a continuing investigation into the extent of alleged "Cadet Honor Code" violations.

No prior application has heretofore been made for the same or similar relief requested herein.

Plaintiffs have no adequate remedy at law.

WHEREFORE, it is respectfully requested that the annexed order to show cause be granted in its entirety, together with such other and further relief as the Court may deem just and proper.

Edward G. Galian

Sworn to before me this
23-24 day of May, 1976

BEST COPY AVAILABLE

Panel Investigating 70 to 90 New Cases of Suspected Cheating at West Point

By JAMES FERON
Special to The New York Times

WEST POINT, N.Y., May 24—The superintendent of the United States Military Academy, Lieut. Gen. Sidney Berry, said today that a recently appointed internal review panel was investigating 70 to 90 new cases of suspected cheating.

The special investigative board of officers and cadets was appointed by General Berry in response to allegations from many of the 40 cadets already charged with cheating that West Point has been covering up a wider scandal.

Acknowledging that the 174-year-old military academy was going through a "terribly difficult time," General Berry said at a news conference that the honor code remained the "cornerstone of a cadet's values and that it would remain in force although it would continue to undergo modifications.

The alleged cheating took place in an electrical engineering examination in March. Of the 117 original suspects discovered through scrutiny of papers within the same company, 101 went before honor boards. Forty-nine were acquitted, four resigned and 48 are awaiting action by appeals boards. Some claim that at least 200 other cadets were involved.

Concession Is Seen

In what appeared to be a major concession to critics of the cadet honor code, General Berry announced that he was appointing Col. Hal Rhyne, the deputy commandant of cadets, to a new post of "special assistant to the Commandant for honor matters."

The new position, which is likely to be permanent, will enable Colonel Rhyne to devote full time to "assisting" members of the cadet honor committee in the administration of the code, which states that "a cadet will not lie, cheat or steal, or tolerate those who do."

Academy officials have been reluctant over the years to interfere with what had been a totally cadet-run operation in its crucial initial stages despite allegations that honor committee leaders had used their authority on occasion to "get" cadets in disfavor.

Series of Hearings

Although the honor board is only the first step in a series of hearings using generally recognized judicial procedures, cadets "charged" by the boards with honor violations are widely considered to have been found "guilty" and are treated as such by being separated from their regular companies.

The Commandant of Cadets, Brig. Gen. Walter Ulmer, indicated that procedure inadvertently during a news conference by saying that although Cadet Timothy Ringgold had been "convicted" by an honor board—he was cleared soon after—he would have had the opportunity to "prove his nonguilt" later at an officer hearing.

Asked why anyone should have to "prove their nonguilt," General Ulmer said "it might have been a poor choice of words." He insisted later, however, that the honor code remained "alive and well" at West Point "despite some flaws."

Cadets who said they have been unfairly accused, investigated and charged with honor code violations, or who said they were harassed by cadets angered over exoneration of guilty verdicts, have sought the intervention of Senators and Congressmen, in some cases with the encouragement of military lawyers at West Point.

The disclosure last week that some changes had already been made in the administration of the honor code and General Berry's decision to appoint a review panel for the cheating scandal coincided with the opening of a Congressional investigation of the Academy.

Interviewing Cadets

Representative Thomas Downey, a Suffolk County Democrat who is a member of the House Armed Services Committee, began to interview cadets, officers, lawyers and officials at West Point today, even as General Berry and his staff officers were meeting with the press.

Congressman Downey, who said he was investigating both the honor code and the Academy's handling of the cheating scandal on behalf of the military personnel subcommittee, was accompanied by an aide, Fred Kass. They expected to remain at West Point through the week.

"Because of the rigidity of the honor code," Representative Downey said, "cadets are unable to tell the full truth to Academy officials without placing their careers in jeopardy. We will be interviewing them on an anonymous and confidential basis so that we can begin to determine the full extent of the honor problem at the Academy."

Although the cheating scandal has attracted much of the publicity surrounding the Academy in the last seven weeks, it has been the function and administration of the code that has become the focus of wider interest.

General Berry, addressing himself to the broader issue, said the Academy's mission was to develop "top quality soldier-leaders" from the "widest variables of American society." He said the key link was "integrity" with the "honor system" essential to its development.

General Berry and his staff stressed the limited extent of cheating at West Point, saying that it might extend to only 5 percent of the 4,000 cadets. They also tended to dismiss allegations of harassment such as those expressed by Cadet Steven Verr who has been assigned full-time guard-companion after alleged threats on his life.

In a related development, Sidney Siller, president of the New York Criminal Courts Bar Association, said the association would soon begin formal hearings into the legal protection of cadets and into other matters at West Point.

Mr. Siller said, "We would like to evaluate the honor code as it presently affects the cadet and his legal rights and to inquire into whether the cadets are victims of a system of injustice through misapplication of an otherwise time-honored code."

A 67

N.Y. Times
May 25, 1976

Exhibit "A"

West Point Cadet, Seeking Acquittal Reason, Again Faces Expulsion

By JAMES FERON
Special to The New York Times

WEST POINT, N. Y., May 25 — Cadet Timothy Ringgold, who was cleared once of "tolerating" cheating at West Point, faced expulsion for a second time today after seeking an explanation for the initial acquittal.

Brig. Gen. Walter Ulmer, the commandant of cadets, said he had no choice but to "recommend that Cadet Ringgold appear before a board of officers for violating the honor code" after he insisted that he knew specifically of widespread cheating.

The honor code, which is coming under increasing attention at the United States Military Academy, states that "a cadet will not lie, cheat or steal, or tolerate those who do." The only penalty is expulsion.

MORE—

Forty-eight cadets, all second classmen, or juniors, await appeals boards of officers, charged with cheating on a "take home" examination in March. These cadets and others have charged that "hundreds" were actually involved.

Cadet Ringgold, who is not among those accused, informed the Under Secretary of the Army, Norman B. Augustine, in an informal meeting last month that cheating was "widespread" at West Point. Other cadets who attended the session later charged Cadet Ringgold with "toleration."

Origin of Charge

The Phoenix, second classman was cleared of the charge within a week, however, following widespread publication of his case. General Ulmer said tonight that the new charge had followed a conversation initiated by the cadet today for an explanation of his acquittal and for remarks made by General Ulmer at a news conference yesterday.

"He asked me why I had reversed the honor-board decision," General Ulmer said. "I said it had not been clear to me that he was referring to a specific case in his talk with Mr. Augustine, nor could we find any corroborating evidence."

"He told me that we were looking in the wrong company," General Ulmer said. It has been the contention of accused cadets that Academy officials have resisted comparing examination papers across company lines because it would reveal a larger involvement."

"Are you telling me that you have first-hand knowledge of cadets who have violated the honor code apart from what we know?" General Ulmer said he asked.

"Yes sir," the general quoted Cadet Ringgold as having replied. The cadet was then told he would appear before a new review panel.

General Ulmer described Cadet Ringgold's interview as "curious." The commandant said he was "morally obligated" to press the new charges which he said were "self-generated" by the cadet. Cadet Ringgold had asked one of his Senators, Barry Goldwater, Republican of Arizona, to press for an investigation of his case.

Meanwhile, Cadet Steven Verr, a plebe, or freshman, who has become a source of irritation among cadets and officers over his disclosure of harassment practices, was asked today by his tactical officer if he wanted to begin his summer leave one week early.

The Brookfield, Ill., cadet said tonight in a telephone conversation that he had decided to take his leave on June 2, with the rest of his class. He has been assigned a 24-hour guard because of alleged death threats by honor committee leaders.

Cadet Ringgold and other cadets now charged with honor violations will face a newly appointed review panel of officers and cadets that temporarily replaces the all-cadet honor boards, the focus of allegations of unfairness and corruption. More than 70 new cases of suspected cheating have recently emerged.

A 68

N.Y. Times
May 26, 1976

Exhibit "B"

N.Y. Times, May 27, 1976

Accused Cadets to Involve Hundreds of Classmates

By JAMES FERON
Special to The New York Times

WEST POINT, N. Y., May 25 — Cadets accused of cheating at West Point or who are critical of the honor code are compiling lists of hundreds of names of classmates who they say remain unprosecuted.

The intention appears to be to confront the United States Military Academy with a difficult choice: to prosecute all suspects, with the likelihood that many would also name others and eventually prompt widespread expulsions, or to acquit everyone and re-examine the code.

A turning point in the cheating scandal is likely in the next few days, with appeals boards of officers for the 43 cadets accused so far set to convene Friday and graduation scheduled for next Wednesday. Examination papers of 98 other cadets are being investigated as "suspect."

The Academy appeared to be preparing for a wider inquiry by announcing the expansion of a recently appointed internal review panel from six to 18 members. Summer leave for juniors has also been delayed for at least 10 days, an Academy spokesman said.

The honor code states that a cadet "will not lie, cheat or steal, or tolerate those who do," but there has been growing criticism of its effectiveness since the cadets were officially charged with cheating in an electrical engineering examination in March.

Those accused have contended that hundreds of other cadets were involved, but they say the Academy has been reluctant to consider the effects of the large-scale resignations or expulsions. The only penalty

Continued From Page 1, Col. 7

for an honor code violation is expulsion.

Other cadets and lawyers who feel that the code is unworkable in its present form apparently have decided that if there is to be an investigation, all violations should be considered with them.

These include charges being prepared against honor board members, including seniors who are preparing for graduation and a commission in the Army, for having tampered with witnesses and juries and other violations.

With time running out, cadets are bypassing normal Academy channels to seek an investigation of their charges. They are turning lists of names over to prosecutors as well as defense lawyers, and they are coming forward with old violations of their own cheating.

Cheating can include asking a roommate to spell a word. It can mean collaboration on a computer during a take-home test or it can involve copying another cadet's paper. Some cadets say copying is a routine time saver on some simple barracks assignments.

"If hundreds of cadets are found guilty," Cadet Timothy Ringgold said last night, "can the code be working?" He said that his hope was that "we will all be allowed to stay, and that the Academy will have a new look at its code."

Cadet Ringgold, a junior from Phoenix who said he had not cheated on the electrical engineering examination, indicated that he had sought an interview yesterday with the commandant, Brig. Gen. Walter Ulmer, to demand acceptance of his list of 75 names who, he said, had cheated. He charged that at least one of them had bribed his way to acquittal.

"I had been accused of 'toleration' because I said cheating was widespread in a talk with Army Undersecretary Norman Augustine," he said, "but they dropped the charge because of so-called 'new evidence'"

When I asked General Ulmer about the new evidence, he said they could not find proof that I had referred to a specific case. I said I knew of many specific cases, so I was charged with toleration again."

He said he had been unable to initiate an investigation when he submitted his list earlier to a cadet honor board, to his tactical officer, to two brigadier commanders and to the deputy commandant, Col. Hal Rhyne, who was recently named special representative for "honor matters."

The scope of the growing demands for a full inquiry has become evident in recent days, with lights burning in the Army lawyers' offices until 3 A.M. and one cadet turning a list of 185 names over to an Army lawyer who will serve as prosecutor.

A cadet who was present at the time said he heard the lawyer tell the Superintendent, Lieut. Gen. Sidney Berry, that "there are not enough officers on the post to man the officer boards we will need."

The increasing turmoil at the 174-year-old Academy has become evident to Congressional investigators, one of them said today. Representative Thomas W. Downey, a Suffolk County Democrat and member of the House Armed Services Committee, has been interviewing cadets with an assistant, Fred Hess.

Academy investigators, meanwhile, have interrogated a janitor who was reported to have initiated a statement relaying death threats alleged to have been made by Cadet William Andersen, head of the honor committee, against Cadet Steven Vore, a pitcher who has been the focus of official harassment following dismissal of his honor code "violation."

Cadet Vore, who was also interrogated, said that although Academy officials had described the statement as bogus, the handwritten original was in the possession of an Army lawyer and three cadets cited as witnesses in the statement had confirmed its accuracy. Cadet Andersen has denied issuing the threats.

Exhibit "C"

4346. Cadets—Requirements for admission.—(a) To be eligible for admission to the Academy a candidate must be at least 17 years of age and must not have passed his twenty-second birthday on July 1 of the year in which he enters the Academy.

(b) To be admitted to the Academy, an appointee must show, by an examination held under regulations prescribed by the Secretary of the Army, that he is qualified in the subjects prescribed by the Secretary.

(c) A candidate designated as a principal or an alternate for appointment as a cadet shall appear for physical examination at a time and place designated by the Secretary.

(d) To be admitted to the Academy, an appointee must take and subscribe to the following oath—

"I, - - - -, do solemnly swear that I will support the Constitution of the United States, and bear true allegiance to the National Government; that I will maintain and defend the sovereignty of the United States, paramount to any and all allegiance, sovereignty, or fealty I may owe to any State or country whatsoever; and that I will at all times obey the legal orders of my superior officers, and the Uniform Code of Military Justice."

If a candidate for admission refuses to take this oath, his appointment is terminated. (Aug. 10, 1956, c. 1041, § 1, 70A Stat. 242.)

EXHIBIT "D"

4351. Cadets—Deficiencies in conduct or studies—Effect of failure on successor. —(a) A cadet who is reported as deficient in conduct or studies and recommended to be discharged from the Academy may not, unless recommended by the Academic Board, be returned or reappointed to the Academy.

(b) Any cadet who fails to pass a required examination because he is deficient in any one subject of instruction is entitled to a reexamination of equal scope and difficulty in that subject, if he applies in writing to the Academic Board within 10 days after he is officially notified of his failure. The reexamination shall be held within 60 days after the date of his application. If the cadet passes the reexamination and is otherwise qualified, he shall be readmitted to the Academy. If he fails, he may not have another examination.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the admission of his successor. (Aug. 10, 1956, c. 1041, § 1, 70A Stat. 244.)

Prior law.—This section is based on Act Aug. 11, 1916, c. 314 (3d, 4th, and 5th provisos under "Permanent Establishment"), 39 Stat. 493—R. S. § 1325—Act June 30, 1950, c. 421, § 2 (1st proviso), 64 Stat. 304 (§§ 1092b, 1103, and 1104 of former Title 10).

EXHIBIT "E"

4352. Cadets—Hazing.—(a) Subject to the approval of the Secretary of the Army, the Superintendent of the Academy shall issue regulations—

(1) defining hazing;

(2) designed to prevent that practice; and

(3) prescribing dismissal, suspension, or other adequate punishment for violations.

(b) If a cadet who is charged with violating a regulation issued under subsection (a), the penalty for which is or may be dismissal from the Academy, requests in writing a trial by a general court-martial, he may not be dismissed for that offense except under sentence of such a court.

(c) A cadet dismissed from the Academy for hazing may not be reappointed to the Corps of Cadets, and is ineligible for appointment as a commissioned officer in a regular component of the Army, Navy, Air Force, or Marine Corps, until two years after the graduation of his class. (Aug. 10, 1956, c. 1041, § 1, 70A Stat. 244.)

EXHIBIT "F"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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CADET TIMOTHY D. RINGGOLD, Individually and on behalf of all other similarly situated cadets of the U.S. Military Academy,

Plaintiffs,

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Dept. of the Army, LT. GEN. SIDNEY B. BERRY, as Supt. of the U.S.M.A., BRIG. GEN. WALTER F. ULMER, Commandant of Cadets, U.S.M.A., CADET WILLIAM ANDERSEN, as Outgoing Chairman of the U.S.M.A. Honor Code Board Committee, and CADET MICHAEL IVY, as Incoming Chairman of the U.S.M.A. Honor Code Board Committee,

Defendants.
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Index # 76 Civ 2442

VERIFIED COMPLAINT

Class action

Plaintiffs, complaining of defendants, by Siller & Galian, their attorneys, alleges :

1. That at all times hereinafter mentioned the United States of America was and still is the sovereign governmental authority over the ownership, operation and control of the United States Military Academy at West Point (hereinafter referred to as West Point), New York, pursuant and subject to the provisions and prohibitions contained in the lawful statutes of the

Congress of the United States and the Constitution of the United States.

2. That at all times hereinafter mentioned, the United States Department of the Army was and still is the governmental office and agency charged with the duty of operating and maintaining West Point.

3. That the defendant, Martin R. Hoffman, is the Secretary of the Department of the Army, charged with the duty of directing the business and affairs of the United States Department of the Army.

4. That at all times hereinafter mentioned, the defendant, Lt. Gen. Sidney B. Berry, was and still is the Superintendent of West Point.

5. That the Superintendent of West Point is the commanding officer of West Point and is in charge of the immediate government thereof.

6. That at all times hereinafter mentioned, the defendant, Brig. Gen. Walter F. Ulmer, was and still is, the Commandant of Cadets at West Point.

7. That the Commandant of Cadets at West Point is the immediate commander of the Corps of Cadets, and is in charge of the instruction of the corps in tactics.

8. That at all times hereinafter mentioned, Cadet William Andersen was the Chairman of the Cadet Honor Committee for the Class of 1976.

9. That, upon information and belief, the chairman of the Cadet Honor Committee for 1976 was the outgoing senior Cadet Honor Committee Representative in charge of the implementation and enforcement of the Cadet Honor Code for the fiscal year ending in June, 1976.

10. That at all times hereinafter mentioned, Cadet Michael Ivy was the chairman of the Cadet Honor Committee for 1977.

11. That, upon information and belief, the chairman of the Cadet Honor Committee for 1977 was the incoming senior Cadet Honor Committee Representative in charge of the implementation and enforcement of the Cadet Honor Code for the fiscal year ending in June, 1977.

12. That the mission of West Point is to educate and instruct and train cadets to be commissioned officers in the United States Army.

13. That each cadet as a condition of his appointment to West Point is required to take an oath of allegiance as prescribed by the statutes of the U.S.A.

14. That a cadet who has satisfactorily completed the prescribed course of instruction at West Point may, upon graduation, be appointed a second lieutenant in the Regular Army of the United States of America.

15. That in violation of the laws of the Congress of the United States and the Constitution of the United States, the defendants, and each of them, have fostered, enforced and implemented an alleged "Cadet Honor Code."

16. That the said "Cadet Honor Code" provides that "a cadet will not lie, cheat or steal, nor tolerate those who do."

17. That the only penalty for violation of the said Cadet Honor Code is expulsion from West Point.

18. That the illegal fostering, implementation and enforcement of the said Cadet Honor Code is detrimental to and impedes the fulfillment of the mission of West Point in that it is subjectively invoked, unequally implemented and enforced and creative of divisiveness and discontent among the cadets who are expressly required thereunder to spy and inform upon their peers.

19. That plaintiff, Timothy Ringgold, has been charged with said Honor Code violation, "tolerating," and is required to appear before a Cadet Honor Board.

20. That if said Cadet Honor Board should find plaintiff, Timothy Ringgold, guilty of "toleration," he is subject to expulsion from West Point forthwith.

21. That said plaintiff, as well as other cadets, have publicly acknowledged that hundreds of cadets are similarly guilty of "toleration" and are not tried for such Honor Code violation.

22. That the failure to equally apply the Cadet Honor Code to all guilty cadets is prevalent at West Point and is deliberately sanctioned by the defendants herein to cover up the true extent of the Cadet Honor Code violations so as to perpetuate the illegal, illusory and unworkable standard for cadet behaviour.

23. That by reason of the foregoing, plaintiff, Timothy Ringgold, and those cadets who are similarly affected, have suffered and continue to suffer irreparable injury to their army careers, their reputation and they and their families have been and continue to be deprived of their constitutional rights.

24. That by reason of the foregoing, West Point has suffered irreparable injury in that its mission to educate and train cadets for service as commissioned officers in the regular army has been seriously impaired.

25. That plaintiffs have no adequate remedy at law.

26. That no previous application has been made for the relief demanded herein.

27. That plaintiff, Timothy Ringgold, complaining for himself and all other West Point cadets similarly situated, alleges that the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; there are questions of law and fact common to the class which predominate over any questions affecting only individual members; the claims or defenses of the representative parties are typical of the

claims or defenses of the class; the representative parties will fairly and adequately protect the interests of the class; and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

WHEREFORE , plaintiff,, individually and on behalf of all other similarly situated cadets at West Point demands judgment against defendants, and each of them, as follows:

a) That a permenent injunction be issued directing defendants, and each of them, in their representative capacity

1- To ban forthwith the Cadet Honor Code, in its entirety, together with any written or oral reference thereto, from the United States Military Academy, at West Point, New York.

2- To eliminate and/or dismiss forthwith any and all offices and bodies whose function it was to implement and enforce the Cadet Honor Code.

3- To discontinue and terminate forthwith any and all trials, hearings, investigations, inquiries and other activities related in any manner whatsoever to the Cadet Honor Code and its implementation or enforcement.

4- To reinstate to their prior rank, position and class all cadets who were heretofore adjudged "guilty" of Honor Code violations.

5- To reject all resignations of cadets who heretofore submitted same in response to charges of Cadet Honor Code viol-

ations and to immediately reinstate said cadets to the cadet corps to their prior rank, position and class.

6- To expunge from the service records of all cadets any and all references to Honor Code violations, and

7- To remain subject to such other and further orders which the court may deem just and proper herein.

SILLER & GALIAN, Esqs.
Attorneys for Plaintiffs

By Edward G. Galian
Edward G. Galian
370 Lexington Avenue
New York, N.Y. 10017

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

☐ Certification By Attorney certifies that the within has been compared by the undersigned with the original found to be a true and complete copy.

☒ Attorney's Affirmation shows: deponent is a member of the firm of Siller & Galian, Esqs., the attorney(s) of record for plaintiffs in the within action; deponent has read the foregoing Complaint and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by plaintiffs because plaintiffs reside in a county outside the county where their attorneys are located.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: plaintiffs' affidavits, documentary evidence and personal investigation of the facts.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: June 1, 1976
New York, N.Y.

S/
.....
The name signed must be printed beneath
Edward G. Galian

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CADET TIMOTHY D. RINGGOLD, et al.,

Plaintiffs,

-v-

THE UNITED STATES OF AMERICA, et al.,

Defendants.

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER

76 Civ. 2442 (RO)

Upon reading and filing the annexed affidavit of WILLIAM ROCHE BROMNER, Assistant United States Attorney, and upon all the papers and proceedings heretofore had herein, it is hereby

ORDERED, that plaintiffs show cause before Honorable Richard Owen, United States District Judge, in Room 301 of the United States Courthouse, Foley Square, New York, New York, on the 9th day of June, 1976, at 10:30 A.M., or as soon thereafter as counsel can be heard, why judgment should not be entered dismissing the complaint with prejudice, for lack of jurisdiction over the subject matter, and for failure to state a claim upon which relief can be granted, pursuant to Rules 12(b)(1) and (6), Fed. R. Civ. P., and in the alternative, why summary judgment should not be entered dis-

missing the complaint, pursuant to Rule 56(b), Fed. R. Civ. P.; and it is further

ORDERED, that pending the leaving on ~~determination of~~ this motion, the subpoenas heretofore served on defendants or their agents by plaintiffs are stayed, and the individuals subpoenaed relieved from any obligation to appear and give testimony or produce documents in compliance therewith; and it is further

ORDERED, that personal service of this Order To Show Cause together with the papers annexed, made on counsel for the defendants on or before the 7th day of June, 1976, at 3 P. M., will be deemed good and sufficient service.

Dated: New York, New York

June 7, 1976

S/

RICHARD OWEN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CADET TIMOTHY D. RINGGOLD, et al., :

Plaintiffs, :

-v- :

THE UNITED STATES OF AMERICA, et al., :

Defendants. :

AFFIDAVIT

76 Civ. 2442 (RO)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

WILLIAM ROCHE BRONNER, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and am assigned and am familiar with the present matter. I make this affidavit in support of defendant's application for an order to show cause and temporary restraining order.

2. Plaintiffs' motion for a preliminary injunction is returnable on Wednesday, June 9, 1976, at 10:30 A.M.. We submit that our contention that the court lacks subject matter jurisdiction and the complaint fails to state a claim

upon which relif can be granted should logically be heard at the same time, inasmuch as the same arguments will be presented by defendants in support of this motion and in opposition to plaintiffs' motion.

3. I was informed by Lt. Col. Daniel Shimek, Staff Judge Advocate at West Point, on Staurday, June 5, 1976, that various subpoenas had been served on individuals at West Point requiring them to appear on June 9 and give testimony and produce documents.

4. Production of the documents requested in the subpoenas is onerous, and attendance of the witnesses will be inconvenient to them and prejudicial to the good operation of West Point. In addition, defendants will object to the terms of the subpoenas, and will allege privileges and other defenses to production of much of the information sought. Other information constitutes matters of public record and will be produced as soon as possible even without subpoenas.

5. However, defendants are prepared to accept, for purposes of the preliminary injunction motion only, the facts

alleged in defendants' papers. In addition, defendants are required to accept the allegations of the complaint as true for purposes of their motion to dismiss. Defendants are not required to and do not admit these facts for purposes other than the instant motions. And defendants do not necessarily accept the truth of plaintiffs conclusions regarding "ultimate facts" deduced from the specific facts alleged, or regarding conclusions of law.

6. We therefore submit that there is no necessity for a hearing on Wednesday, June 9, and the subpoenas may be adjourned sine die.

7. I have advised Edward G. Galian, Esq., that this application would be made, and I am advised that he has made his views known to the Court.

William Roche Bronner

WILLIAM ROCHE BRONNER
Assistant United States Attorney

Sworn to before me this
7th day of June, 1976.

NOTARY PUBLIC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

CADET TIMOTHY D. RINGGOLD, individually and on behalf of all other similarly situated cadets of the U.S. Military Academy,

Plaintiff,

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Dept. of the Army, LT. GEN. SIDNEY B. BERRY, as Supt. of the U.S.M.A., BRIG. GEN. WALTER F. ULMER, Commandant of Cadets, U.S.M.A., CADET WILLIAM ANDERSEN, as Outgoing Chairman of the U.S.M.A. Honor Code Board Committee, and CADET MICHAEL IVY, as Incoming Chairman of the U.S.M.A. Honor Code Board Committee,

Defendants.

- -x

AFFIDAVIT

Index #

WILLIAM ROCHE BROWER, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and am assigned the present matter. I make this affidavit in opposition to the pending application for a temporary restraining order preventing any further processing of honor code violations at the United States Military Academy at West Point.

BEST COPY AVAILABLE

2. While the circumstances in which this application arises preclude me from obtaining any information regarding the present ongoing activities at West Point, I am familiar with the nature of the honor code violation adjudicatory procedure from my previous representation of the United States in Andrews v. Knowlton and White v. Knowlton, before Honorable Hitman Knapp of this Court, and (consolidated) upon appeal. My understanding of the present circumstances is gained from the papers served upon this office as well as from the press coverage of recent happenings at West Point.

3. Andrews v. Knowlton, 509 F.2d 898 (2d Cir. 1975) can be seen to be an almost identical situation to the present one alleged by plaintiff herein:

> Each appellant complains that the Cadet Honor Committee proceedings and subsequent hearings before the Board of Officers which resulted in separation from the Academy were so lacking in procedural safeguards as to constitute a deprivation of their constitutional rights. . .
>
> * * *
>
> ...On April 5 and 6, 1973, the Department of Physics at the Academy administered four examinations. The same true-false and multiple choice questions were asked in two separate sections at different times. Because the Department was concerned about cheating, the order in which the questions were asked in the later examinations at one of the later hours, and each paper showed what was felt to be an unreasonably high number of answers which, although inaccurate in the examination taken, correlated to approved solutions in the earlier examination. Id. at 901.

4. On information and belief, the procedure for a cadet suspected of an honor violation is as follows: he is taken before a student-run committee called an Honor Committee, which acts in an analogous fashion to a Grand Jury. If the Honor Committee fails to vote a "guilty" verdict the matter is dropped. Otherwise, the cadet may either resign or elect to go before a Board of Officers. The Board is composed exclusively of active officers, and it conducts a full-scale hearing comporting in all respects with the requirements of administrative due process. This hearing is a de novo hearing, and although precipitated by the Honor Committee verdict, accords it no weight whatsoever. If the Board should find an honor violation (by a simple majority, on a standard of preponderance of the evidence), the Cadet is expelled, unless an administrative appeal is taken.

5. In Andrews, the Court reviewed the history of litigation regarding the service academies, including specifically Wasson v. Trowbridge, 382 F.2d 807 (2d Cir. 1967) and Mayopian v. Howlton, 470 F.2d 201 (2d Cir. 1972), and recited the proper jurisdiction to review such military decisions regarding their Cadets, and the standards which the Academies must meet.

6. The Court then noted that the issues raised herein were (1) whether the proceedings before the Honor Committee resulted in any deprivation of procedural requirements of the Due Process Clause of the Fifth Amendment, (2) whether the procedures and the standard of proof utilized by the Board of Officers' hearings comported with the procedural due processess as well, and (3) whether the sole penalty of explusion constituted a deprivation of constitutional rights. The Court sustained the Academy on all these issues.

7. The standard for issuance of a temporary restraining order is similar to that for issuance of a preliminary injunction, namely, whether there will be immediate irreparable injury if the order is not issued, whether there is a balance of equities favoring issuance, and whether there is a probability of success on the merits of the party seeking the order. However, because of the lack of an opportunity for a full development of the issues, a temporary restraining order is even more of an extraordinary remedy than is a preliminary injunction.

8. While the extent of the cheating at West Point may be straining the resources of those having responsibility for the administration of the Honor Code, there is nothing approaching a breakdown of the procedures by which the Cadets' due process rights are protected. It appears from plaintiffs' papers that the voir dire of a panel from which Boards of

officers will be chosen took two days. [redacted]. I am advised by Lt. Col. Daniel Schoek, Staff Judge Advocate (senior legal officer) that four boards have been convened. One adjourned to allow the respondent to obtain civilian counsel, one adjourned to allow the respondent to obtain a witness, and two are deliberating. There has been no showing of any breakdown in fundamental due process.

9. The proper procedure for the named plaintiffs is to assert their innocence in their board hearings. If they have been entrapped, or otherwise 'unfairly' treated, the Board is the administrative body with primary jurisdiction. Only after the Board has found a violation, and this has been appealed unsuccessfully, will the matter be ripe for review in the Courts.

10. There is no proper class herein. The main effect of the present cheating scandal, other than publicity, has been that the classes involved have been held at West Point rather than being sent to their summer assignments. This inconvenience will be best remedied by immediate prosecution of all other cases to swift conclusions. Since the other cadets involved presumably are aware of this fact, it can also be presumed that those not accused of violations want matters to proceed on course, rather than be interrupted by judicial intervention. These cadets, the

majority, would clearly not want the present plaintiffs to represent them.

11. Plaintiffs in the present application seek the entire relief demanded in the complaint. There is no showing of a breakdown of administrative procedures. There is nothing in the present papers to overcome the presumption of regularity to be afforded to the Boards of Officers, or to justify the prejudice which would result from an injunction.

12. The evidence is at its freshest at the present time.

Innocent Cadets charged with violations are entitled to prompt adjudications upon the freshest possible record.

WHEREFORE, I respectfully submit that the application for a temporary restraining order be denied. Furthermore, I submit that upon the papers already filed, the motion for a preliminary injunction may be denied, and the matter dismissed for lack of jurisdiction, as unripe.

William Roche Bronner

WILLIAM ROCHE BRONNER
Assistant United States Attorney

Sworn to before me this
7 day of June, 1976

/s

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

CADET TIMOTHY D. RINGGOLD, individually and on behalf of all other similarly situated cadets of the U. S. Military Academy,

Plaintiff,

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, ET AL.,

Defendants.

----------X

AFFIDAVIT #1

LIEUTENANT COLONEL DANIEL W. SHIMEK, being first duly sworn, deposes and says:

1. I am the Staff Judge Advocate at the United States Military Academy and have been in this position since 1 July 1975.

2. In this capacity, I am aware of and familiar with the sequence of events and administrative actions taken in reference to the discovery of a substantial number of possible cheating cases arising out of an Electrical Engineering home study computer problem given to the Class of 1977 at the Academy on 3-4 March 1976. Attached and made a part hereof is a chronology of events concerning the aforementioned matter. To the best of my knowledge and belief it is an accurate and complete recitation of the administrative process of this matter by the

United States Military Academy.

Further, the deponent sayeth naught.

Daniel W. Shimek

DANIEL W. SHIMEK

STATE OF NEW YORK)
) SS.
COUNTY OF ORANGE)

SIGNED AND SWORN TO before me this 7th day of June, 1976.

Janet L. Dow

NOTARY PUBLIC

JANET L. DOW
Notary Public, State of New York
Appointed in Orange County
Commission Expires Mar. 30, 19 78

CHRONOLOGY

TO ACCOMPANY AFFIDAVIT

1976
March

3-4 Department of Electrical Engineering issued the first part of a two-part home study computer problem to 822 cadets of Class of 1977 in the course numbered EE 304.

9-12 Department of Electrical Engineering orally informed all cadets of clarifying change in one equation on page nine of home study computer problem.

17-18 Mandatory turn-in dates for Part I of home study problem. 820 cadets turned in problem for grades.

19 Generally, each EE 304 instructor commenced grading of students' home study problems.

An instructor in EE 304, while grading papers, suspected possible unauthorized collaboration concerning two cadets. The Head of the Department of Electrical Engineering was notified.

19-24 Other EE 304 instructors surfaced several additional suspect papers.

24-25 The Head of the Department of Electrical Engineering directed the assembly and review of all EE 304 home study problems on a company basis to determine extent of unauthorized collaboration.

26 Head of the Department of Electrical Engineering was apprised of partial results of review which revealed evidence of a substantial amount of unauthorized collaboration in re the home study problem. The Deputy Commandant of Cadets was so informed.

26-31 Review continued and summary sheets prepared in re suspect papers.

April

1 Department of Electrical Engineering review of home study problems completed.

4 Meeting between Head of Department of Electrical Engineering, Deputy Commandant and Chairmen of Cadet Honor Committee. Deputy Commandant took possession of 117 suspect papers.

Deputy Commandant advised Staff Judge Advocate of the possible existence of a number of cheating cases arising out of the Electrical Engineering home study problem in which collaboration was not authorized.

5 Commandant of Cadets decided to refer EE 304 cases to Cadet Honor Committee for investigation. An instructor from the Electrical Engineering Department gave a presentation on the EE 304 home study problem in question to all Honor Committee members involved in Subcommittee hearings. A representative of the Staff Judge Advocate reviewed proper investigatory techniques with Subcommittee members.

1976
April

6 Subcommittee hearings commenced and completed. As result of Subcommittee hearings, 101 cases were referred to the Cadet Honor Committee for full hearings. Fifteen cases were not forwarded and one cadet resigned.

11 Instructors in the Department of Electrical Engineering gave a class on the EE 304 home study problem to all members of the Cadet Honor Committee.

12 Full Honor Committee hearings commenced.

13 Staff Judge Advocate Memorandum to the Dean of the Academic Board in re identification of potential officer character witnesses to facilitate selection of panels for Officer Boards.

S1/S3, USCC, LTC Cook, forwarded to Staff Judge Advocate first group of original home study problems considered by Cadet Honor Boards. These study problems included the papers prepared by those cadets who had been found on that date to have violated the Cadet Honor Code and also the papers of those who were not so found but were part of a group in which one or more cadets were so found. Additional papers with forwarding letters from Commandant to Superintendent to follow on continuing basis as cases are completed by Cadet Honor Board.

19 The first three of the original cases were referred to Board of Officers by Superintendent, USMA.

Department of Law requested the Department of Electrical Engineering to arrange for a class to be given to all counsel involved in EE 304 cases. An instructor from the Department of Electrical Engineering was selected to prepare and give presentation as soon as possible after completion of Cadet Honor Boards.

During the period 19-21 April the selected EE 304 instructor, in conjunction with Law Department members, prepared a supplemental EE 304 text for use in the class to be given attorneys. He also gathered additional EE 304 texts, home study problems, approved solutions, and other textual materials for distribution to attorneys.

20 (approx) Department of Law received Honor Committee files and tapes of first four or five cases completed. Turned over to Recorders for review and advice as to referral and appropriate allegations. Chairman, Honor Committee, advised to continue gathering files of Committee proceedings and forward to Law Department as cases completed. Problem existed in that entire Committee involved in hearings and it was difficult to free people to organize and forward files. Honor Committee also advised to gather together, label and forward Subcommittee tapes to Law Department after Full Committee records have been forwarded.

1976
April

21 Cadet Honor Committee hearings substantially completed. Fifty cadets found to have violated the Honor Code, fifty not so found and one resigned during hearings.

At weekly office conference potential counsel for respondents were advised that requests for evidence could not be honored immediately since bulk of material had not as yet been forwarded to Law Department. As it arrived it had to be sorted, placed in working files and copies made for each potential respondent. Government counsel made files available to counsel for respondent when such access did not interfere with copying or recorders' preliminary review of files to determine advisability of referral and appropriate allegations.

22 Selected instructor from Electrical Engineering Department presented class in EE 304 to all members of Department of Law. Emphasis placed on knowledge required to work home study problem in question.

Law Department requested Department of Electrical Engineering to forward remainder of EE 304 home study problems to Law Department. Request complied with.

Department of Law began to copy files for counsel for respondents.

23 The next four cases were referred to Board of Officers by Superintendent, USMA.

S1/S3, USCC, forwarded last group of original home study problems to Department of Law.

26 The next eight cases referred to Board of Officers by Superintendent, USMA.

Honor Committee files and tapes for substantially all cases received this date. Collating with existing files commenced.

S1/S3, USCC, forwarded to Department of Law, 39 original home study problems considered by Cadet Honor Boards wherein all cadets in group were not found to have violated the Cadet Honor Code.

27 One cadet resigned in lieu of hearing before Board of Officers (49 of original 50 cadets reported by Cadet Honor Committee remaining).

All original 820 home study problems and Honor Committee tapes made available on controlled basis to all counsel.

29 Analysis of answers given for each question on all 820 papers commenced this date. Purpose to provide raw data concerning variations in answers, approach, etc.

May

3 Request for Convening of Impartial Board of Inquiry by ten counsel for respondents, thru channels, to the Secretary of the Army.

4 First Indorsement by Superintendent, USMA, thru channels, to Secretary of the Army.

1976

May

11 Analysis of answers given on EE 304 home study problem completed. Raw data made available to all counsel on request.

12 A second cadet resigned in lieu of hearing before a Board of Officers (48 of original 50 cadets reported by Cadet Honor Committee remaining).

14 Copying of 48 original case files completed.

17-27 Term-End Examinations.

19 Reply from Secretary of the Army denying counsel for respondents' request for Convening of an Impartial Board of Inquiry. Attorneys encouraged to offer matters raised for consideration by regularly appointed Boards of Officers.

Twenty more cases referred to Boards of Officers by Superintendent, USMA.

Department of Electrical Engineering instructed to assemble Review Team of three EE 304 instructors for the purpose of determining whether additional cadets may have cheated on the EE 304 home study problem.

20 EE 304 Review Team began reviewing all 820 papers, first on a company-by-company basis, and later along various associational and organizational lines,i.e., Corps Squads, clubs, etc.

23 Superintendent selected a Permanent Professor to head up a five-man Internal Review Panel to investigate and determine whether there is sufficient cause to refer additional cases to a Board of Officers. The EE 304 Review Team to provide technical assistance and advice.

24 Orders promulgated officially establishing Internal Review Panel. Panel briefed on EE 304 home study problem by instructor from Department of Electrical Engineering. Panel began considering its first group of papers.

26 Internal Review Panel expanded into five subpanels under selected Permanent Professor to facilitate processing. Subpanel members briefed on EE 304 home study problem by a member of the Department of Electrical Engineering. Panels commenced considering cases referred to it by EE 304 Review Team.

28 First case heard by Board of Officers. Four respondents scheduled to participate, one granted a delay.

31 Twelve more of the original cases referred to Boards of Officers by Superintendent, USMA. As a result of the Recommendations of the Superintendent's Internal Review Panel, 46 other cases were referred to Boards of Officers.

1976
June

2 Graduation day. First Board of Officers completed. Two respondents found to have violated the Cadet Honor Code. Concerning the remaining respondent, the Board found that the allegation was not supported by substantial evidence.

3 Second Board of Officers convened. Eight respondents scheduled to participate, two granted delays. Hearing still in progress.

4 Superintendent referred 38 cases to Boards of Officers as a result of the Internal Review Panel; one was out of the original 48 and 37 were additional cases. Further, he withdrew the case of one cadet which had been previously referred. Therefore, as of this date there are 130 cases referred to Boards of Officers by the Superintendent.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CADET TIMOTHY D. RINGGOLD, individually and on behalf of all other similarly situated cadets of the U. S. Military Academy,

Plaintiff

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, ET AL.,

Defendants.

AFFIDAVIT #2

LIEUTENANT COLONEL DANIEL W. SHIMEK, being first duly sworn, deposes and says:

1. I am the Staff Judge Advocate at the United States Military Academy and have been in this position since 1 July 1975.

2. Referring to the matters requested in the rider to the Civil Subpoena of several of the defendants in the above-captioned case, the following is submitted concerning each numbered request.

(1) The current regulations for the United States Military Academy are available for reproduction or examination. However, past regulations would require much time and effort to research and assemble as this would date back to approximately 1802. The request for studies, reports and recommendations is too vague to be able to prepare a proper reply.

(2) The requested study is available for reproduction or examination. To the best of my knowledge and belief there are no documents emanating from the Department of the Army with respect to said study.

(3) All requested service records would require an inordinate amount of research time. Moreover, release of records of recent but ascertainable cadets involved in honor cases, except in the case of a named identifiable plaintiff, would be a breach of the Privacy Act and would qualify as a personnel record exception to the Freedom of Information Act.

(4) Records of Cadet Honor Hearings which do not result in Boards of Officers are believed to be destroyed at regular intervals. Said records are also not official United States records; however, they would contain privileged material as discussed in (3), above.

(5) Recent documents as described would be available. Others may be available after extensive research if properly identified.

(6) Reports of Boards of Visitors are available at the Military Academy. It appears that there are no readily available extra copies. All the reports are not centrally located and will take some time to collect. Each report with supporting documentation probably does not exceed 100 pages. Nevertheless, it will also require some time and substantial expense to reproduce these copies. Meanwhile, they may be examined at the Military Academy.

Further, the deponent sayeth naught.

DANIEL W. SHIMEK

STATE OF NEW YORK)
) SS.
COUNTY OF ORANGE)

SIGNED AND SWORN TO before me this 7th day of June,

1976.

Janet L. Dow
NOTARY PUBLIC

JANET L. DOW
Notary Public, State of New York
Appointed in Orange County
Commission Expires Mar. 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CADET TIMOTHY D. RINGGOLD, individually and on behalf of all other similarly situated cadets of the U. S. Military Academy,

Plaintiff

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, ET AL.,

Defendants.

A F F I D A V I T #2

LIEUTENANT COLONEL DANIEL W. SHIMEK, being first duly sworn, deposes and says:

1. I am the Staff Judge Advocate at the United States Military Academy and have been in this position since 1 July 1975.

2. In my capacity as Staff Judge Advocate I am familiar with the substance and status of any allegations presently pending against Cadet Timothy D. Ringgold, Company E-2, United States Corps of Cadets, Class of 1977, Cadet Stephen Scott Hutton, Company D-4, United States Corps of Cadets, Class of 1977, Cadet Mark Anthony English, Company E-3, United States Corps of Cadets, Class of 1977, and Cadet Garrett Paul Keane, Company F-4, United States Corps of Cadets, Class of 1977. The following subparagraphs briefly explain the substance and status of any allegations that may be presently pending against the aforementioned cadets.

a. Cadet Timothy D. Ringgold. On 10 May 1976 the Cadet Honor Committee considered an alleged violation of the Cadet Honor Code on the part of Cadet Timothy D. Ringgold. The alleged violation arose out of a conversation Cadet Ringgold had with Assistant Secretary of the Army Norman R. Augustine, wherein Cadet Ringgold allegedly admitted that he was personally aware of numerous instances of cheating (collaboration) on an Electrical Engineering Home Study Problem handed out in March 1976. Cadet Ringgold elected not to appear before the Honor Committee. After hearing testimony from witnesses who had been present when Cadet Ringgold made his admission the Cadet Honor Committee, by unanimous vote, concluded that he was guilty of toleration. The Commandant of Cadets reviewed the facts provided by the Cadet Honor Committee and decided that the case should not be forwarded to the Superintendent for referral to a Board of Officers. Subsequently, on 25 May 1976, Cadet Ringgold at his request personally appeared before the Commandant of Cadets and reported himself for tolerating violations of the Cadet Honor Code. His report was general in nature, giving no specifics. After giving Cadet Ringgold every opportunity to withdraw, modify and expand upon his statements, the Commandant of Cadets reluctantly forwarded a recommendation to the Superintendent that Cadet Ringgold be referred to a Board of Officers for tolerating violations of the Cadet Honor Code. The Commandant's letter is presently in the Office of the Staff Judge Advocate for review and investigation. Due to the paucity of information available, no decision has been made as to whether Cadet Ringgold will be referred for investigation to a Board of Officers. Ultimately, his case could be forwarded to the Superintendent with a recommendation that he refer it directly to a Board of Officers; or it could be forwarded to the Superintendent's Internal Review Panel for further investiation and recommendations; or the matter could be dropped due to insufficient evidence.

b. Cadet Stephen S. Hutton. Cadet Hutton up until approximately mid-April 1976 was an elected second class member in good standing of the Cadet Honor Committee, an office which he freely accepted. He was functioning as the second class honor representative for Company D-4 at the time when a significant number of cheating cases arose out of an Electrical Engineering Take Home Problem. In the normal course of events Cadet Hutton would have sat in judgment of his peers or acted as an investigating officer, as these cases were presented to the Cadet Honor Committee. However, Cadet Hutton never served in that capacity because on or about 14 April 1976 another second class member of the Honor Committee reported Cadet Hutton for allegedly trying to persuade him to "vote not guilty" in a particular case he was to sit on. When confronted with this information, Cadet Hutton gave evasive, misleading and contradictory explanations (quibbling) which is a well-recognized violation of the Cadet Honor Code. As a result, on 29 May 1976, the Cadet Honor Committee convened a Board to investigate Cadet Hutton for lying in that he quibbled concerning the statements he made to the other honor representative. The Cadet Honor Committee found that Cadet Hutton had violated the Cadet Honor Code as alleged and reported the matter to the Commandant of Cadets. On 5 May 1976, after considering the facts provided by the Cadet Honor Committee, the Commandant forwarded a recommendation to the Superintendent that Cadet Hutton be referred to a Board of Officers to investigate and make findings regarding the alleged violation of the Cadet Honor Code. Upon review of the facts by the Office of the Staff Judge Advocate, the Superintendent referred his case to a Board of Officers on 19 May 1976. The Superintendent also instructed that the Board of Officers concurrently investigate, make findings and appropriate recommendations concerning Cadet Hutton's commission of a major disciplinary offense to wit: Conduct Unbecoming an Officer and a

Gentleman in that he attempted to wrongfully and improperly influence the vote of a member of the Cadet Honor Committee in a case pending before that Committee. Before the additional allegation was drafted and referred, a complaint was made by a member of the Cadet Honor Committee who sat on the Board that considered Cadet Hutton's case. That individual alleged that Cadet Hutton, in the presence of witnesses, struck him a number of times, without provocation, in an apparent attempt to provoke an altercation. Witnesses present at the scene verify the facts and also indicate that threats against this individual were made by Cadet Hutton. The Criminal Investigation Division (CID), USMA, has conducted an investigation into this matter. Consequently, all administrative action previously contemplated against Cadet Hutton is being held in abeyance pending receipt and consideration of the CID Report of Investigation. Ultimately, Cadet Hutton could possibly face court-martial for violations of the Uniform Code of Military Justice, Articles128 (Assault), 133 (Conduct Unbecoming an Officer and a Gentleman) and 134 (Communicating a Threat); or additional specifications alleging major disciplinary offenses could be referred to the same Board of Officers scheduled to hear his alleged violation of the Cadet Honor Code.

c. Cadet Mark Anthony English. On 3 and 4 March 1976, the Department of Electrical Engineering, United States Military Academy, issued a home study computer problem to 822 cadets enrolled in EE 304. The home study problem required each cadet to solve six problems in which there were a total of eleven responses. Ten responses were based upon numerical calculations and one upon a short essay-type answer. Published instructions required each cadet to do his own individual work without discussion with other cadets, that is, collaboration was unauthorized. Electrical Engineering instructors, however, could be

approached for assistance. The solutions of 820 cadets were turned in on 17 and 18 March 1976. While the papers were being graded by instructors of the Department of Electrical Engineering, it became apparent that several individuals may have engaged in unauthorized collaboration. A further review of all 820 papers along company organizational lines increased the number to 117 individual cadets acting in small groups throughout the class of 1977. Cadet English was one of a group of eight cadets from Company E-3 who were included in the overall total of 117. These papers were turned over to the Office of the Commandant of Cadets for appropriate action. The Commandant referred the 117 individuals, to include Cadet English, to the Cadet Honor Committee for investigation. On 14 April 1976 the Cadet Honor Committee convened a Board to investigate Cadet English and the several other cadets for collaborating on the graded home study computer problem in EE 304, when such collaboration was specifically not authorized. The Cadet Honor Committee found that Cadet English and the other cadets had violated the Cadet Honor Code as alleged. The evidence presented revealed substantial similarities in methodology (some of it erroneous), language and placement of work among the several papers. On 15 April 1976, after reviewing the facts provided by the Cadet Honor Committee, the Commandant forwarded a recommendation to the Superintendent that Cadet English, et al. be referred to a Board of Officers to investigate and make findings regarding the alleged violation of the Cadet Honor Code. Upon review of the facts by the Office of the Staff Judge Advocate, the Superintendent referred the case to a Board of Officers on 31 May 1976. The Board of Officers is presently scheduled to convene on 21 June 1976.

d. Cadet Garrett P. Keane. Cadet Keane, along with two other members of his company, was also included in the overall total of 117 cadets originally suspected of cheating on the EE 304 home study problem referred to above. The procedures described in reference to Cadet English, et al. were also followed in the case of Cadet Keane. A Cadet Honor Committee Board convened on 14 April 1976 and found that Cadet Keane had in fact collaborated on the EE 304 take home exam in violation of the Cadet Honor Code. On the recommendation of the Commandant of Cadets and after review by the Office of the Staff Judge Advocate, the Superintendent on 19 May 1976 referred Cadet Keane, et al. to a Board of Officers. The Board of Officers is presently scheduled to convene on 6 July 1976.

Further, the deponent sayeth naught.

Daniel W. Shimek

DANIEL W. SHIMEK

STATE OF NEW YORK)
) SS.
COUNTY OF ORANGE)

SIGNED AND SWORN TO before me this 7th day of June, 1976.

Janet L. Dow

NOTARY PUBLIC

JANET L. DOW
Notary Public, State of New York
Appointed in Orange County
Commission Expires Mar. 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CADET TIMOTHY D. RINGGOLD, individually and on behalf of all other similarly situated cadets of the U. S. Military Academy,

Plaintiff,

-against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, ET AL.,

Defendants.

AFFIDAVIT #4

LIEUTENANT COLONEL DANIEL W. SHIMEK, being first duly sworn, deposes and says:

1. I am the Staff Judge Advocate at the United States Military Academy, West Point, New York and have been in this position since 1 July 1975. I am also a 1960 graduate of the United States Military Academy. Consequently, I am intimately familiar with the Cadet Honor Code, both past and present.

2. Referring to the Order to Show Cause in the above-captioned case, the following is submitted.

3. Contrary to popular belief, the Cadet Honor Code presently in force at the United States Military Academy is not a Code peculiar to West Point alone or a creation of that institution. It is based upon the "Code of Honor" that existed in the Officer Corps of the Army of 1802 which in turn was derived from officer code, the code of a gentleman, practised in Europe for centuries before the founding of this nation. This "officers code" covered everything from chivalry to personal integrity; qualities

that experience has shown are especially desirable in officer leaders throughout history. At the birth of our nation the founding fathers wisely provided that the military should be subordinate to lawfully elected civilian authority. Officer leaders at the head of large groups of armed men have the potential power to impose their will on the civilian masses. Moreover, their officer status imposes grave responsibilities upon them, both for the lives of soldiers and civilians entrusted to their care and also for the overseeing of civilian and military property of untold value. Thus, every civilized nation has recognized in one fashion or another the need for commissioning men in the armed forces who are of unquestioned loyalty and integrity. Men who despite personal disadvantage or friendship will render true and faithful service to their country. In 1802, the United States Military Academy was established to provide such officers for our fledgling nation's Army. At that time the "Code of Honor" quite naturally became a fact of cadet life. Presently, graduates of the United States Military Academy make up approximately 50% of this nation's professional Army Officer Corps. The President and the Senate in commissioning them have reposed <u>special</u> faith and confidence in their loyalty, abilities and integrity. In this context, the Cadet Honor Code is hardly redundant. It is a clear, precise and simple statement of the high standards that civilized nations throughout history have required of those persons commissioned in the profession of arms. Is there a more appropriate place than the United States Military Academy for strict enforcement of such code? The Cadet Honor Code will not make honorable men of persons who are not so inclined as a consequence of their early associations or upbringing. At best, all it can do is re-emphasize and solidify that which each cadet brings to the Academy. The Code and its enforcement, however, does identify and provide for the separation of those persons not up

to its tenets and therefore the special faith and confidence that ultimate commissioning brings. The severity of separation as the sole sanction for violation of the Code is merely a reflection of the importance of the Code in providing reliable and trustworthy officers for this nation's standing Army. The courts have recognized this and declined to rule that expulsion is cruel and unusual punishment.

4. Moreover, the Cadet Honor Code does not require a cadet to spy on his fellows. It simply requires him to report violations of the Code, including his own, should he happen to become aware of them. A cadet is under no obligation to root out or look for honor violators. Keeping in mind the special status and responsibilities that commissioning brings to bear on these inchoate officers, the penalty of separation for failure to report violations is not totally unreasonable. I do not believe that this nation is prepared to repose special faith and confidence in a man who because of personal gain or friendship fails to report an honor violation when for the very same reasons he may later, as a commissioned officer, fail to report a war crime or theft of government property or the making of false reports, etc. because he personally believes, under the circumstances, the matter is unimportant. We are not dealing with a standard to be applied to the general population but one to be applied to individuals who will be placed in a special status and entrusted with the most solemn and grave responsibilities.

5. The Cadet Honor Code is not a concept unique to the United States Military Academy. Similar codes exist at other schools, civilian and military. Professions which require a special trust in the performance of their assigned duties, be they legal, medical or military, are bound by codes of honor or ethics. This is especially important for the officers of the military whose decisions affect both the lives of the civilians they are entrusted to defend but also the lives of the citizen soldier who serve under these officers.

6. Certain tenets of the Code are specific, especially those related to academic cheating, stealing, and the giving of false reports. They relate to the statutory law of various systems of jurisprudence deriving its source ~~of~~ from the natural law or the common law which denounce acts of dishonesty. Others are general acts of dishonesty such as quibbling and toleration which while not statutory in origin are the common law of various subcultures providing non-criminal sanctions for acts or omissions that nevertheless constitute a form of dishonesty that does not qualify one for the awarding of a commission as an officer in the regular army.

7. For all of the foregoing reasons, Plaintiff request that the Honor Code be banned henceforth from enforcement at the United States Military Academy should not be granted. To do so would seriously undermine the mission and purpose of this institution which is to instruct and train the Corps of Cadets so that each graduate shall have the qualities and attributes essential to his progressive and continuing development throughout a career as an officer of the Regular Army. Similarly, the other requested relief should also be denied.

Further, the deponent sayeth naught.

Daniel W. Shimek

DANIEL W. SHIMEK

STATE OF NEW YORK)
) SS.
COUNTY OF ORANGE)

SWORN TO AND SUBSCRIBED before me a Notary Public this 7th day of June, 1976.

Janet L. Dow

NOTARY PUBLIC

JANET L. DOW
Notary Public, State of New York
Appointed in Orange County
Commission Expires Mar. 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

CADET TIMOTHY D. RINGGOLD, Individually and on behalf of all other similarly situated cadets of the U.S. Military Academy,

Plaintiffs,

--against-

THE UNITED STATES OF AMERICA, MARTIN R. HOFFMAN, as Secretary of the Dept. of the Army, LT. GEN. SIDNEY B. BERRY, as Supt. of the U.S.M.A., BRIG. GEN. WALTER F. ULMER, Commandant of Cadets, U.S.M.A., CADET WILLIAM ANDERSEN, as Outgoing Chairman of the U.S.M.A. Honor Code Board Committee, and CADET MICHAEL IVY, as Incoming Chairman of the U.S.M.A. Honor Code Board Committee,

Defendants.

----------X

Index #76 Civ. 2442

REPLY AFFIDAVIT
and
AFFIDAVIT IN OPPOSITION TO ORDER TO SHOW CAUSE TO DISMISS COMPLAINT

State of New York)
County of New York) ss. :

EDWARD G. GALIAN, being duly sworn, deposes and says :

This affidavit is submitted in reply to the affidavit of William Roche Bronner, Assistant United States Attorney, submitted in opposition to plaintiff's Order To Show Cause for a preliminary injunction, and in opposition to defendants' order to show cause for judgment dismissing plaintiffs' complaint herein.

Defendants seek a dismissal of the complaint under Rules 12 (b)(1) and (6), Fed. R. Civ. P., and in the alternative, summary judgment pursuant to Rule 56 (b), Fed. R. Civ. P.

It is their position that the court lacks jurisdiction over the subject matter and that it fails to state a claim upon which relief can be granted.

Both contentions are without merit.

Defendants apparently rely upon Andrews v Knowlton, 509 F. 2d 898 (2d Cir. 1975) and incorrectly imply that the situation before the court therein is identical to the instant case. This, of course, is disputed.

It was the position of the proponents in the Andrews case that the Cadet Honor Code Committee proceedings and subsequent hearings before the Board of Officers which resulted in their expulsion were so lacking in procedural safeguards as to constitute a deprivation of their constitutional rights.

In the instant case, the proponents for injunctive relief charge that the so-called Cadet Honor Code is a misnomer; that said "Cadet Honor Code" is in actuality an illegal "System" whose implementation is traditionally and involuntarily assigned to the Corps of Cadets not by their consent; that the Cadet Honor Code proscriptions are fatally defective in and of themselves, by reason of innate "vagueness," necessitating subjective and arbitrary interpretation and application, neither necessary nor

conducive to the fulfillment of the mission of the United States Military Academy.

Furthermore, the "System" constitutes a blatant, illegal delegation of powers without authority from the Congress of the United States which is charged by the United States Constitution, Article I, Section 8, "to make rules for the government and regulation of the land and naval forces." In fact, Congress has promulgated a voluminous body of law for the maintenance of order and discipline within the military services, the Uniform Code of Military Justice, U.S.C., Title 10, Section 801, et seq., effectively pre-empting the imposition of the "Cadet Honor Code and System" for the alleged "administration" through prejudicial adjudicative procedures demanded by the United States Military Academy pursuant to said "System."

Additionally, each U.S.M.A. cadet has, as a condition to his appointment, and pursuant to Congressional requirement, sworn, among other things, to "obey the legal orders of my superior officers, and the Uniform Code of Military Justice." U.S.C., Title 10, Section 4351.

No cadet has, as a condition of either his appointment or his retention at the Academy sworn allegiance to the "Cadet Honor Code and System," which is in practice often derogatory of honor, justice and law.

the pertinent facts and circumstances involved. As may be noted from a review of the plaintiff's supporting affidavits to the Order To Show Cause for preliminary injunction, numerous ultimate facts have been alleged, the supporting evidence being unavailable to counsel for plaintiffs. The official and military nature of the hierarchy at the United States Military Academy has not seen fit to candidly offer the necessary evidentiary material which it is incumbent upon this court to possess in order to reach a just and proper decision upon plaintiff's application. Subpoenas duces tecum, though served in strict conformity with law, have been stayed upon an illusory concession that all of plaintiffs' factual assertions shall be admitted to be true. The truth, however, consists not only of those facts set forth in plaintiffs' supporting documentation, but also that evidence which is in the sole custody and control of the defendants in their representative capacity.

Consequently, it is respectfully urged that plaintiffs be allowed their just day in court; that the pertinent evidence in the custody and control of defendants which is the property of the citizenry, not the property of those officials who may exercise immediate possession, be produced for the inspection of the plaintiffs and the court; and that those public officials who have knowledge of the facts be required to attend at court and give true testimony concerning the matters relevant to the plaintiffs' application and which they only possess.

The "Cadet Honor Code System" infringes upon the basic Constitutional due process guarantees in many insidious ways. It deprives an accused cadet of the right to

1- be informed of the nature and cause of the accusation;

2- remain silent;

3- counsel;

4- cross-examine witnesses; and

5- equal treatment under its proscriptions and application.

Accordingly, it is contended that this court has ample jurisdiction over the subject matter. Furthermore, upon plaintiffs' claim and demonstration of facts concerning unconstituionality, a case is raised which the court is empowered to review.

More specifically, the Andrews case, supra., itself, has ruled that "the power of the District Court to review procedures used at our service academies in the separation or dismissal of cadets and midshipmen is clear." See also Hagopian v Knowlton, 470 F. 2d 201 (2d Cir. 1972); Wasson v Trowbridge, 382 F. 2d 807 (2d Cir. 1967); Krawez v Stand, 306 F. Supp. 1230, 1233-34 (E.D. N.Y. 1969).

The instant case is comprised of most complex constitutional questions which can only be reached after a thorough evidentiary hearing has been held so as to apprise this court of

In corroboration of some of the more serious allegations of the unjust nature of the "Cadet Honor Code and System," annexed hereto and made a part hereof is a letter, dated May 3, 1976, to the Hon. Martin R. Hoffman, Secretary of the U.S. Department of the Army. It was transmitted over the signature of ten (10) judge advocate general officers whose duty it is to defend 48 respective cadets of the United States Military Academy, all accused of Honor Code violations, and requested that an impartial Board of Inquiry be convened to investigate their findings of widespread cheating and the ensuing coverup thereof. (Exhibit "A")

Upon information and belief, the requested Inquiry was denied. (Exhibit "B")

WHEREFORE, it is respectfully requested that the plaintiffs' application for a preliminary injunction be granted in its entirety, or in the alternative that an evidentiary hearing thereon be scheduled forthwith, and that defendants motion to dismiss the complaint be denied, together with such other and further relief as the court may deem just and proper.

Edward G. Galian

Sworn to before me this
8th day of June, 1976

SIDNEY SELLER
NOTARY PUBLIC State of New York
No. 31-8909435
Qualified in New York County
Commission Expires March 30, 1978

MELBARDIS

DEPARTMENT OF THE ARMY
UNITED STATES MILITARY ACADEMY
WEST POINT, NEW YORK 10996

MAJA

3 May 1976

SUBJECT: Request for Convening of Impartial Board of Inquiry

THRU: LTC Daniel W. Shimek
Staff Judge Advocate
United States Military Academy
West Point, New York 10996

LTC Sidney B. Berry
Superintendent
United States Military Academy
West Point, New York 10996

GEN Fred C. Weyand
Chief of Staff
United States Army
Washington, D. C. 20310

TO: Mr. Martin R. Hoffmann
Secretary of the Army
Washington, D. C. 20310

1. The undersigned, detailed counsel for approximately 48 cadets at the United States Military Academy presently charged with violating the Cadet Honor Code by exchanging information on a homestudy computer problem respectfully request that a closed Board of Inquiry be convened, at Secretarial level or higher, prior to administrative elimination hearings now scheduled for these cadets at West Point. We appreciate that this may be regarded as a rather unusual request, but we are convinced that it is fully justified under the circumstances.

2. In relation to this incident, the Superintendent and other high-level officials at the Military Academy have publicly stated that it is their judgment that cheating was not widespread, that the Cadet Honor Committee accomplished its work in a professional manner, and that cadets remain strongly supportive of the principles of the Honor Code.

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

EXHIBIT "A"

MAJA 3 May 1976
SUBJECT: Request for Convening of Impartial Board of Inquiry

3. In discharging our assigned duties in this case, we have discovered that cheating was widespread, that the Cadet Honor Committee not only acted arbitrarily and improperly in some cases but that certain of its members affirmatively conspired and acted to conceal and cover up violations of the Cadet Honor Code, and that the gap between the principles of the Honor Code and the practice of that Code by the United States Corps of Cadets is incredibly wide. Direct tangible evidence to support these assertions, principally in the form of sworn affidavits (typical examples attached, with names masked), is presently in the hands of the undersigned. These voluntary statements, taken under oath, convincingly establish:

a. that but a small fraction of those who actually "cheated" on the homestudy problem in question are being held accountable for their actions. Estimates of the number of cadets who failed to live up to the letter and spirit of the Cadet Honor Code in this matter range upwards of 300 members of the Class of 1977. Several cadets who have admitted that they gave, received or tolerated the exchange of information pertaining to this homework problem have indicated that the actual number of those that violated the Honor Code in this manner is more than twice that figure;

b. that the Cadet Honor Committee was conspicuously ineffectual in distinguishing between cadets who did and those who did not violate the Cadet Honor Code. Unfortunately, their poor performance in ascertaining the truth of this matter cannot be attributed entirely to good faith mistakes and errors of judgment. There is tangible evidence that scores if not hundreds of "cheaters" in the Class of 1977 were never called upon to account for their actions in this matter and that others escaped the stigma of being "found" by the Cadet Honor Committee by lying their way through the proceedings.

4. At this point, the precise scope of the problem cannot be determined. It can be said that the considerable body of evidence presently available to us directly corroborates those who, notwithstanding contrary pronouncements by senior Military Academy officials, believe that the Cadet Honor Code has no special meaning to many if not most members of the Corps of Cadets who regard it as just another obstacle to be overcome in order to graduate. It is apparent that this attitude is completely incompatible with what is generally understood to be the fundamental purpose of the Cadet Honor Code, to instill the highest possible sense of personal integrity in tomorrow's leaders of the Regular Army.

5. Particular attention is invited to the "toleration" clause of the Cadet Honor Code which has had the peculiar effect in these cases of directly suppressing the truth. That is, countless cadets who violated the Honor Code, and know of other offenders, have "gone underground" and been restrained from speaking openly and truthfully about this incident because to do so would subject them to the single mandatory sanction of expulsion. Accordingly, we feel that it is absolutely essential that testimonial immunity be granted all interested cadets at the Board of Inquiry in order that the true facts concerning the nature and scope of this cheating incident may be ascertained prior to the time that the extreme sanction of dismissal is considered and perhaps

3 May 1976

MAJA
SUBJECT: Request for Convening of Impartial Board of Inquiry

imposed upon a select few.

6. Neither ethically nor professionally can we as Army officers and attorneys understand the logic, wisdom or fairness of existing attempts to "purify" the system by permanently stigmatizing only a few of the many who have transgressed the Cadet Honor Code. Stated differently, the underlying integrity problem within the Class of 1977 and throughout the Corps of Cadets will not be solved by a purge of the 40-50 cadets presently charged. Indeed, such action would tend to vindicate large numbers of accomplished cheaters, and perhaps liars, who remain in good standing within the Cadet Corps. We cannot reconcile the present status and treatment of these cadets with that of our clients who not only face administrative hearings in the near future designed to eliminate them from the service but already have been involuntarily moved to another cadet company, denied varsity athletic privileges, and denied the opportunity to receive and wear their class rings. These "nonpunitive" measures have had the effect of bringing pressure upon these cadets who have elected to ask for an administrative hearing rather than to summarily resign.

7. The urgency and importance of this request, both to the dozens of young men involved and also to the entire officer corps of the United States Army, cannot be overstated. All that we ask is that the Board of Inquiry be truly fair and impartial, that it be convened at the highest possible level above that of the Superintendent, and that testimonial immunity be granted to cadet witnesses so that the true facts surrounding this incident may be brought to light in a responsible, orderly and timely manner. Our request for a hearing before a tribunal which does not report to those presently charged with the administration or supervision of the Cadet Honor System is a carefully considered one. We would emphasize that we seek no special favors for our clients; we simply ask that their treatment at the hands of United States Military Academy and Department of the Army officials be no more unfavorable than that received by innumerable cadets who are similarly situated. Such is not the case at the present time.

8. It is our understanding that the Class of 1977 is expected to provide leadership to the Corps of Cadets when the first group of female cadets is admitted and throughout our Country's Bicentennial Year. That being the case, the resolution of this matter in an expeditious, fair and above-the-board manner would appear to be in the best interests of everyone concerned. Your personal and careful attention to this request would be appreciated.

DANIEL H. SHARPHORN
CPT, JAGC
Detailed Counsel for Respondents

BURK E. BISHOP
CPT, JAGC
Detailed Counsel for Respondents

ARTHUR F. LINCOLN, JR.
CPT, JAGC
Detailed Counsel for Respondents

JAMES L. OSGARD
CPT, JAGC
Detailed Counsel for Respondents

MAJA.

3 May 1976

SUBJECT: Request for Convening of Impartial Board of Inquiry

Paul L Foster
PAUL L. FOSTER
CPT, JAGC
Detailed Counsel for Respondents

Dominick J. Thomas, Jr.
DOMINICK J. THOMAS, JR.
CPT, JAGC
Detailed Counsel for Respondents

VICTOR S. CARTER, JR.
CPT, JAGC
Detailed Counsel for Respondents

LE ROY L. DE NOOYER, by DHS, agent
LE ROY L. DE NOOYER
CPT, JAGC
Detailed Counsel for Respondents

W. Alexander Melbardis
W. ALEXANDER MELBARDIS
CPT, JAGC
Detailed Counsel for Respondents

William J. Hemmer
WILLIAM J. HEMMER
MAJ, JAGC
Detailed Counsel for Respondents

4 Incls
1. Affidavit
2. Affidavit
3. Affidavit
4. Affidavit

AFFIDAVIT

I, (NAME) (COMPANY) Class of 1977, wish to make the following sworn statement.

I have personal knowledge of the following events:

About one week prior to the boards, cadets were seeing the President of the board, (NAME) Class of 1976, who was President of about 18 boards to ask him if the board could be weighed towards an innocent vote.

Through my personal observation, the following individuals requested from the President, (NAME) that he do all he could for them to be found innocent:

(NAME) , Class of 1977
(NAME) Class of 1977

I had an Honor Board and I found out that (NAME) was going to be my President, so I asked him if he would help me out. I was subsequently found innocent.

I have personal knowledge of three individuals who had the power in their hands to give an innocent vote. They are:

(NAME)
(NAME)
(NAME)

All of the above are Honor Reps.

Through indirect channels I heard that the Honor Reps were contacted by friends of those who were going up for boards that they be found innocent.

I don't know if all those other cadets actually made contact, but I assumed they did.

I have personal knowledge of collaboration. The following names are:

(NAME)
(NAME)
(NAME)

#1

(NAME)
(NAME)
(NAME)
(NAME)
(NAME)
(NAME)
(NAME)
(NAME)
(NAME)
(NAME)
(NAME)
(NAME)
(NAME)
(NAME)
(NAME)
(NAME)

(SIGNATURE)

(TYPED NAME)
CDT, Co.
Class of 1977

Sworn to before me by the notary powers invested by me under 10 USC §936.

(SIGNATURE)

(TYPED NAME)
CPT, JAGC
Respondent's Counsel

AFFIDAVIT

I, (NAME) (COMPANY) Class of 1977, wish to make the following sworn statement.

I have personal knowledge of the following events:

That the President of the Board (DESIGNATED REGIMENT) (NAME) Class of 1976, made deals with Cadets (NAME) and (NAME), Class of 1977, while the three of them were out together a week before the board to have (NAME) and (NAME) found innocent.

I have personal knowledge that Cadet (NAME) Class of 1976, made arrangements with the voting members of (NAME)'s and (NAME)'s board to have them found innocent.

I also have personal knowledge that Cadet (NAME) Class of 1977, was voting innocent on Boards that were obviously guilty because he was against the Honor Code.

(SIGNATURE)
(TYPED NAME)
CDT, Co.
Class of 1977

Sworn to before me by the notary powers invested by me under 10 USC §936.

(SIGNATURE)
(TYPED NAME)
CPT, JAGC
Respondent's Counsel

#2

AFFIDAVIT

I, CADET (NAME) , hereby make the following official statement under oath. Of my own personal knowledge, I know:

a. That in relation to the EE graded homework exercise concerned in the current Honor Code investigations, I collaborated with cadets (NAME) , (NAME) , (NAME), and (NAME) , none of whom were called before a Cadet Honor Committee.

b. Additionally, I collaborated with cadets (NAME) (NAME) and (NAME) all of whom were found innocent of any violations by the Cadet Honor Committee.

c. In addition, I have knowledge that cadets (NAME) (NAME) (NAME) (NAME) (NAME) (NAME) (NAME) (NAME) (NAME) (NAME) and (NAME) also gave or received out-of-class help on the homework exercise or tolerated others who did, who either were not called before the Cadet Honor Committee or were found innocent by that Committee.

(SIGNATURE)
(TYPED NAME)
Cadet Private
Company Regiment

Sworn and subscribed before me this 30th day of April 1976.

(SIGNATURE)
(TYPED NAME)
CPT JAGC
Authorized to administer oaths under provisions of 10 USC 936

#3

AFFIDAVIT

I, (NAME) have personal knowledge of the following violations of the Cadet Honor Code:

(NAME) --, '77, used his cadet credit card while on leave in June '74, to force people to take his personal check. He told these people that he was acting as an official agent of the United States Government and that they were required to take his personal check when supported by the credit card. (NAME) '77 was witness to the actual event. (NAME) related the incident to me. One night while on confinement, (NAME) went to Grant Hall with his card marked. His roommate, (NAME) '77, confronted him with the violation. (NAME) told him that if he reported him he would break him in half. (NAME) tolerated (NAME) 's violation.

(NAME) , '77 and I made numerous honor violations together while roommates, in cheating outright, lieing and violation of the absence card.

(NAME) and I left post (DATE) with our cards marked "on limits." As roommates we committed numerous violations, including coming back, after taps Homecoming Weekend, '75 and when stopped by a guard, we told him we were on weekend status. We related our story to (NAME) , '77 who tolerated our violation and admitted to committing numerous violations with (NAME) particularly limits violations.

(NAME) , '77 tolerated my honor violation while on summer leave, June '74. I had stolen parachute gear from the airborne detachment and sold it while on leave. (NAME) was aware of the source of the equipment I was selling.

(NAME) , '77 and (NAME) '77 both lied as to the (OFFENSE) disciplinary board in

(NAME) tolerated my honor violation when I admitted to him of knowing of many cadets cheating in the EE 304 Computer project. He later lied as to our conversation having ever taken place.

(NAME) , '77 and I committed frequent limits violations together. (NAME) has relayed to me many incidents of known violations of the honor code within his company. For example, on the EE 304 Computer project he told me of the 29 second classmen in his company only six did not collaborate. (NAME) has told me of many accounts of widespread cheating on

4

work done outside of class as well as outright lieing in the company.

(NAME) , ., '77 has discussed cheating in his company and his numerous participation including the EE 304 Computer project.

(NAME) offered to help me if he sits on my honor board.
(NAME) is the second class honor representative for .

(NAME , , '77 tolerated my violation when I told him of violations within our company. He is said to have personal knowledge of numerous violations.

(NAME) , , '78 requested money from his fixed account to (PURPOSE) when in actuality it was to purchase from me items for resale.

(NAME) , , '77 tolerated my honor violation when I lied to (NAME) when questioned about (INCIDENT) .

(NAME), , '77 committed numerous violations of limits with his card marked in order to purchase alcoholic beverages for several parties we gave. He is known among friends as (NAME) for his frequent lies.

(NAME), , '76, (NAME) , , '7., (NAME) , , '77, (NAME), , '77 and I committed limits violations and lied about the use of a government vehicle in order to purchase alcoholic beverages for a party we gave.

(NAME) , , '77, admitted to me of committing numerous violations while rooming with ((NAME), ,).

(NAME) , E-2, '77 and (NAME) , , '77 came to me for help on a take-home graded exercise for knowing that collaboration was not authorized. I helped them.

(NAME), ., '77 picked up a suit from the tailor at the Cadet Store for (NAME) , , '. He walked out without paying for it. The plan was for (NAME) to pick it up so that if he got stopped he could say he thought (NAME) had already payed for it.

(NAME) '77 found a of OPE in the back of a truck we picked up from the motel pool. He kept the in his trunk room until after and then sent them home and had OPE scratch off. He now uses them as his personal (NAME) told me that "honor is optional" in his company, citing several examples of almost unanimous corruption of his company with respect to the honor code. He told me after the EE 304 Computer project was investigated that only six people in his company did the project themselves. Included in the 23 who cheated from '77 are (NAME)

(NAME) '77 and I (OFFENSE) , (HONOR OFFENSE)

We were caught and (NAME) was investigated for Honor because of the (EVIDENCE) At his subcommitte he denied attempting to deceive and the matter was dropped.

(NAME) , '77 while on CTLT at (PLACE) , was sitting at a table in a bar with (NAME) '77. (NAME) stole an ashtray from the bar and (NAME) threatened to report him. (NAME) said he'd break his face if he did. (NAME) tolerated (NAME) violation.

(NAME) and (NAME) , '77 admitted to cheating on the EE 304 Computer project but made deals with (NAME) '76, the President of their board, so they would be acquitted. They were.

I have investigated cheating on the EE 304 Computer project and the following individuals, not previously named, have admitted to cheating.

(NAME) (NAME) (NAME) (NAME) (NAME) (NAME) (NAME) (NAME) (NAME) (NAME) , , '77, (NAME) , , '77, (NAME) , , '77, (NAME) , , '77, (NAME) , , '77, (NAME) , , '77, (NAME) , , '77, (NAME) , , '77, (NAME) , , '77, (NAME) , , '77, (NAME) , , '77, (NAME) , , '77, (NAME) , , '77, (NAME) , , '77,

(NAME) (NAME) (NAME)
(NAME) (NAME) (NAME)
(NAME) (NAME)

(SIGNATURE)

(TYPED NAME)
CDT, Co.
Class of 1977

Sworn to before me by the notary powers invested to me under 10 USC §936.

(SIGNATURE)

(TYPED NAME)
CPT, JAGC
Respondent's Counsel

N.Y. Times
May 20, 1976

Study Sought by West Point Legal Staff Is Ruled Out by Secretary of the Army

By JAMES FERON
Special to The New York Times

WEST POINT, N.Y., May 19—Secretary of the Army Martin R. Hoffmann has denied a request by 10 members of the legal staff of the United States Military Academy for an investigation of the procedures being used by West Point in handling its cheating scandal.

The denial, received today at the Academy, suggested that the lawyers submit their allegations of widespread cheating and bad-faith practices by the cadet honor committee to the honor committee themselves, the appeals boards of officers or the superintendent, Lieut. Gen. Sidney Berry.

One of the 10 lawyers, who declined to be identified, said: "It's a perfect Catch-22. Obviously we're not going to take our charges to these agencies because they are who we're accusing of initiating or condoning the wrongdoings."

He said the lawyers had been informedd of the reply late this afternoon and would meet tomorrow to consider their next move. Asked if this might include a request for a Congressional investigation, the lawyer said:

"It could, but that would have to come from our clients [the cadets] because Army officers cannot petition Congress. I understand that some cadets have already asked their senators and congressmen to look into the matter."

An Army spokesman in Washington characterized Secretary Hoffmann's response as "the denial of a request for an extraordinary measure which was not needed for resolution of the current cases."

Forty-nine second classmen, or juniors, have been officially charged with cheating on a electrical engineering examination in March. They have charged that hundreds of others were involved, but that the academy is fearful of the adverse publicity such an investigation would attract.

The cadets are accused of violating the honor code, which states that a "cadet shall not lie, cheat or steal or tolerate those who do."

The only penalty is expulsion. One cadet has been officially charged with attempting to fix honor boards and others have been accused of actually doing so.

The Army spokesman said that Secretary Hoffman had discussed the issue with Superintendent Berry and that they had agreed that an outside inquiry might be useful in the future, but that such an inquiry would not affect the current cases, which are subject to established procedures, including a final review by Secretary Hoffmann of any recommendation involving expulsion.

Another View

Capt. Daniel H. Sharphorn, one of the lawyers and a graduate of West Point, said: "We're really disappointed. We can't understand why they're not doing what we ask. When something has gone wrong with the honor code, we should admit it and correct it."

Captain Sharphorn, a member of the class of 1969 who was appointed to the Academy by President Ford, then a Michigan Congressman, said: "The talk of a future investigation really bothers me, because there's a document at West Point, the result of an earlier investigation, that shows there are problems with the honor code."

"It was an in-depth analysis of the code by academy officials," he said. "To read it is to see the handwriting on the wall. It seems to me that talk of a future investigation is worthless, considering what they already know."

The alleged "bad-faith practices" among members of the honor committee include charges by cadets that range from questionable investigative practices to apparent violations of judicial procedures.

Cadets have given the lawyers notarized statements charging that friends of honor board members were intentionally bypassed although suspected of cheating and that honor committee leaders improperly influenced the boards, or juries.

Some cadets have testified before notaries public to conversations prior to the cheating scandal indicating that potential witnesses in other cases had been threatened, that charges had been manufactured and that evidence had been altered.

The first of the officer boards, which determine if the official charges of cheating by the cadet boards were based on sufficient evidence, is set for May 28, one of the lawyers said. The appeals are expected to last well into July. A cadet is entitled to legal counsel only when his case reaches the appeals board stage.

Three cadets have already resigned in the cheating scandal and 49 others were cleared by the four honor boards that heard 101 cases initially. The cadet accused of jury tampering was on one of those boards.

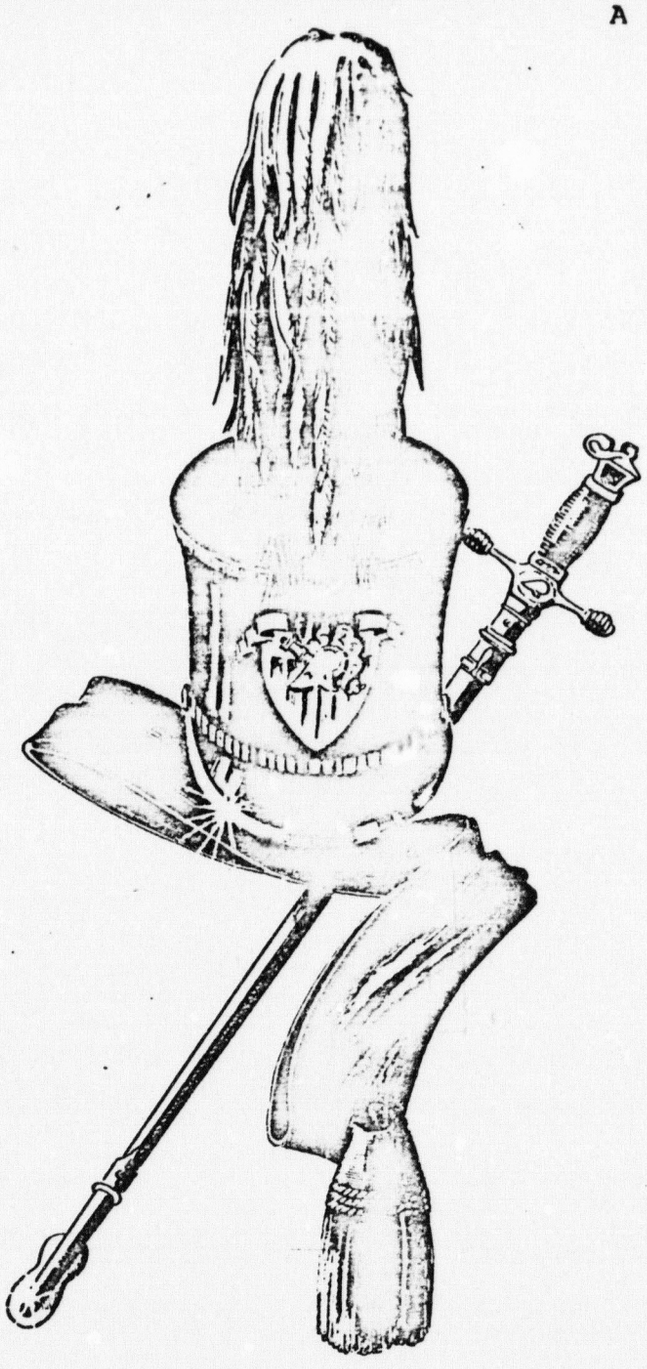
The second classmen awaiting appeals boards have been transferred to different companies and have been told they can no longer represent the corps of cadets. They were banned, for example, from the traditional class ring ceremony and dance last month.

Anti-Cigarette Drive Asked

GENEVA, May 19 (AP)—The World Health Organization called on governments today to restrict cigarette advertising, strengthen warning notices on cigarette packages, enforce smoking bans in public places and protect the rights of nonsmokers.

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HONOR COMMITTEE PROCEDURES

DUTY

HONOR

COUNTRY

United States Corps of Cadets

CADET HONOR COMMITTEE
West Point, New York

8 March 1976

MEMORANDUM FOR: USMA Staff and Faculty

SUBJECT: Honor Committee Procedures

1. In an effort to ensure for the USMA Staff and Faculty a complete understanding of the Cadet Honor System, you are being provided with a copy of the Honor Committee Procedures. These procedures are for your use only, and should not be shown to anyone except the officer personnel of the USMA Staff and Faculty.

2. Nothing about this set of procedures is permanent. They have been established solely as a guide for the Committee in its day to day functioning. These procedures are not legally binding to the Committee and may be changed or deviated from without prior notice.

3. The procedures contained in this pamphlet were adopted by the Cadet Honor Committee and do not represent the policy or direction of the United States Military Academy or any other governmental agency.

. It is our sincere wish that the publication of this pamphlet will give the officer corps of the USMA Staff and Faculty a better understanding of the operation of the Cadet Honor System.

William E. Andersen

WILLIAM E. ANDERSEN
Cadet Captain
Chairman, Honor Committee

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JANUARY

CADET HONOR COMMITTEE
West Point, New York

29 January 1976

MEMORANDUM FOR: United States Corps of Cadets

SUBJECT: Honor Committee Procedures

1. Guidelines for the functioning of the Honor System have existed and have been passed on in a variety of ways. These are neither the first, nor the last set of procedures set up to guide the functioning of Honor Committees. They are presented here, in a rather comprehensive manner, to help provide continuity and assurances of justice.

2. Nothing about this set of practices is sacred or permanent. The Honor System is a constantly changing structure, and cannot be expected to remain fixed over time, if the Code is to remain a viable force in cadet life.

3. As with any procedures, by themselves they are valueless, and can only be as meaningful as they are made to be by the actions of those elected to oversee the administration of the Cadet Honor System.

Chairman, Cadet Honor Committee

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I. GENERAL

A. CADET HONOR COMMITTEE:

The Cadet Honor Committee is directly charged by the United States Corps of Cadets with the supervision and administration of the Cadet Honor Code and System. It consists of one first classman and one second classman elected from each company, four Regimental Honor Representatives, a Secretary, two Vice-Chairman, and a Chairman. Its procedures are designed to ensure a thorough and objective investigation and a fair and impartial hearing for each cadet accused of a violation.

In order to provide continuity of administration, during September of every year the Second Classmen of each company elect their Honor Representatives. During the early spring of each year the second class committee elects its officers in preparation for the assumption of their duties as the official Cadet Honor Committee when the First Class graduates in June. Elected officers include the Chairman, two Vice-Chairmen, the Secretary and four Regimental Honor Representatives (one from each regiment.) Replacements are then elected from each of those companies from which the committee officers were elected. This provision ensures that there is an Honor Representative in each company who is not encumbered by the administrative and supervisory duties of the Honor Committee.

The Company Honor Representative is the work-horse of the organization. He represents the members of his company on the Honor Committee in determining whether or not the standards of honor of an accused are compatible with the Honor Code. He instructs and orients the incoming class during the summer, and all classes during the academic year, on the precepts of the Code and workings of the System. In addition, he keeps his company informed concerning members of the Corps found guilty of violations of the Code. In a sense, he interprets matters of honor on the individual company level. He is also the direct link between the Company Tactical officer and the cadets in his company when questions of honor are concerned. In addition, company honor representatives are assigned as Honor Committee Liaisons to the Academic Departments and various agencies at USMA.

B. HONOR COMMITTEE JOB DESCRIPTION:

1. Chairman of the Cadet Honor Committee:

a. The Chairman has overall responsibility for all matters within the Corps of Cadets which are related to honor. He will coordinate and supervise all aspects of honor indoctrination, education, investigation, and the general functioning of the Committee. The Chairman is the senior cadet in the Corps when questions of honor are the primary concern. He is responsible to the Corps of Cadets and the Honor Committee for the administration of the Cadet Honor Code and operation of the Honor System.

b. Specific Responsibilities:

(1) Acts as the official spokesman of the Cadet Honor Committee to all agencies and interests outside the Committee.

(2) Insures that all honor investigations are performed in accordance with the Committee's procedures for investigations and insures proper handling of all cases.

(3) Decides when there is sufficient cause to close a particular board to individuals other than members of the Cadet Honor Committee.

(4) Serves as Chairman of honor boards, or so directs one of the Vice Chairmen or the Secretary to serve in his absence.

(5) Confers regularly with the Deputy Commandant and Brigade Commander to insure that their respective policies and procedures are compatible with the Honor Code.

(6) Conducts Honor Committee meetings.

(7) Guards against practices in the Corps and Academy environment which are inconsistent with the Honor Code.

(8) Assures an appreciation and understanding of the purpose and objectives of the Honor Code among all cadets along with the importance of accepting the true "spirit" of the Code in their daily activities.

(9) Supervises the conduct of honor education in Cadet Basic Training, Camp Buckner, and throughout the academic year.

(10) Supervises the conduct of honor meetings within the companies during the academic year to instruct all cadets in the Honor Code to acquaint them with the activities of the Cadet Honor Committee, and to advise cadets on points of honorable conduct.

(11) Supervises the conduct of Honor Code orientation for officers assigned to the Academy, visitors, and distinguished guests.

(12) Insures that practices within the Committee are consistent with standards expected of an honor representative. If the ability of a Company Honor Representative to perform his duties and responsibilities should become suspect, the Chairman will order an investigation in accordance with the Procedures for Review and Removal of Honor Representatives for Cause, to determine the individual's suitability to continue as an Honor Representative.

(13) Serve as Chairman of the Cadet Honor Committee Executive Staff.

2. Vice Chairman for Honor Investigation:

a. The Vice Chairman for Honor Investigation supervises and/or conducts any type of investigation within the Committee and any other specific duties assigned by the Chairman.

b. Specific Responsibilities:

(1) Insures that all honor investigations are performed in accordance with the Cadet Honor Committee Procedures for Investigations. With the Chairman, Regimental Honor Representative and appropriate honor representatives, he will insure the proper handling of specific cases.

(2) Guards against practices in the Corps and Academy environment which are inconsistent with the Honor Code. When problems with the Code and/or System arise, such as its misuse in the area of enforcing regulations, the ability or desire of an honor representative to perform his duties, etc., he

will investigate the situation as directed by the Chairman and report his findings back to the Chairman for the proper action by the Honor Committee.

(3) Acts as liaison between Regimental Honor Representatives, Investigating Officers, the Chairman, and the Department of Law to insure high standards of investigation.

(4) Insures all investigations are complete, written statements from each person involved have been received, and that in general the case has been handled in accordance with the Honor Committee's procedures.

(5) Serves as a member of the Cadet Honor Committee Executive Staff.

3. Vice Chairman for Honor Education:

a. The Vice Chairman for honor education has the responsibility for the education and indoctrination of the Corps. Specifically, he is tasked with the preparation of Honor Instruction for the New Cadets and Third Class cadets during the summer, and to all classes during the academic year, and any other duties assigned by the Chairman.

b. Specific Responsibilities:

(1) Schedules the time and location of formal honor instruction.

(2) In accordance with the policy guidelines established by the Chairman, supervises the research and the writing of each honor lesson.

(3) Directs and supervises the publication of lesson syllabi, film clips, movies, etc.

(4) Directs and supervises the preparation of each honor representative involved in honor instruction prior to actual presentation of honor lessons.

(5) Insures that every scheduled honor lesson, in addition to special honor lessons directed by the Chairman, is completed by each honor representative in the time and manner directed by the Chairman.

(6) Supervises the training of the second class honor representatives, as well as those first class representatives replacing elected officers, to insure they are qualified to fulfill their duties.

(7) Conducts a regular evaluation of the honor concept of each class, and proposes training to reinforce weak areas or to correct misunderstandings.

(8) Evaluates and critiques all honor instruction given and makes recommendations for improvement.

(9) Presides at honor boards as directed, in the absence of the Chairman.

(10) Serves as a member of the Cadet Honor Committee Executive Staff.

(11) Insures all fourth class cadets attend at least two full honor boards during the academic year.

(12) Prepares briefs of all cases for distribution to each company, academic department, and tactical department with an explanation of the case and points to be learned from a particular case.

(13) Directs and supervises the liaison cadets to insure that all agencies outside the Corps are kept well informed of changes to the procedures and activities of the Cadet Honor Committee.

4. Secretary of the Honor Committee:

a. The Secretary is responsible for the internal communication and coordination of activities within the Cadet Honor Committee, and for any other duties assigned by the Chairman.

(1) At the direction of the Chairman, the Secretary will preside at a particular Honor Board.

(2) Maintains a separate file of all case summaries, lesson plans, correspondence, publications, and other Cadet Honor Committee communications.

(3) Will appoint two second class recorders for Honor Boards. After testimony the Secretary and the two second

class recorders will prepare summary of the case.

(4) Carries out administrative duties assigned to him by the Chairman.

(5) When notified by the Chairman or Vice Chairman for Investigation of a scheduled honor board, he will select, with the Regimental Investigating Officers, the members to sit on the Honor Board insuring that all persons involved are notified of the Board and will be present.

(6) Serves as a member of the Honor Committee Executive Staff.

5. Regimental Honor Representative:

a. The Regimental Honor Representatives are responsible for insuring that the activities of the Company Honor Representatives within their respective regiments conform to policy guidelines established by the Cadet Honor Committee. He is responsible for all matters pertaining to honor within his regiment.

b. Specific responsibilities:

(1) Directs and supervises the investigation of all suspected honor violations within his regiment or any case in another regiment as directed by the Chairman or Vice Chairman for Investigation in accordance with Honor Committee Procedures. He will investigate cases, collect evidence and written statements from all persons involved, call witnesses, and, in general, present the case to the Full Board. He will specifically insure that the allegation is presented and explained to the accused. Each of the Regimental Honor Representatives have the obligation to investigate and present the case in a fair, impartial and objective manner. After the Honor Committee has made its findings all persons involved should be informed. (If necessary, this process should be repeated after an AR 15-6 Board).

(2) Monitors the status of the Cadet Honor Code within the respective regiments and guards against practices within the regiment which are inconsistent with the Cadet Honor Code.

(3) Confers regularly with the Company Honor Representatives within the regiment concerning Honor Committee policy

and the correct status of the Honor Code and System.

(4) Acts as a liaison between Chairman, Vice Chairman for Investigation, Vice Chairman for Education and the Honor Representatives in his respective regiment.

(5) Serves as a member of the Honor Committee Executive Staff to represent the views of the Company Honor Representatives within his regiment.

(6) Will be responsible for delegating those duties he feels appropriate to the Investigating Officers.

6. Company Honor Representatives:

a. The Company Honor Representatives are the link between the Corps and the Honor Committee. The first class Company Honor Representative is responsible for indoctrination of his company in the honor concept. He will keep the second class honor representative informed on honor matters and ensure that prescribed honor material is covered during classes, seminars, and meetings within his company. Honor representatives shall perform such additional duties as may be assigned by the Chairman and shall be responsible to the Chairman through his staff for the execution of their duties. Second Class Honor Representatives will assist the First Class Honor Representatives in the performance of their responsibilities, and insure full awareness of the principles of the Honor Code and of the functioning of the System by the cadets in his company.

b. Specific responsibilities of First Class Honor Representative:

(1) When appointed, he will serve on honor boards.

(2) When requested, he will act as a cadet advisor to a cadet in question.

(3) Is responsible for indoctrination of his company in the honor concept, and insures that all cadets in his company are well informed on matters concerning honor.

(4) Efficient handling of all possible honor violations.

(5) The Company Honor Representative is the most vital part of the Honor Committee. Without him the Committee cannot function.

c. Specific responsibilities of Second Class Honor Representatives:

(1) Will assist the first class honor representatives with duties and instruction.

(2) Serve as recorders on honor boards when appointed by the Secretary, Cadet Honor Committee.

(3) Will sit as members of Sub-Committees and observe full boards to insure they become familiar with procedures. At a time designated by the Chairman, the second class honor representatives will become members of the full boards.

(4) Second Class representatives begin to formulate committee policy for the coming year in January. Organization as well as lesson plans for honor instruction during the coming year are prepared.

C. HONOR COMMITTEE LIAISONS:

1. The Honor Committee Liaisons are the link between the Honor Committee and the various agencies at the Military Academy. Their main function is to provide an exchange of information between specific agencies and the Cadet Honor Committee.

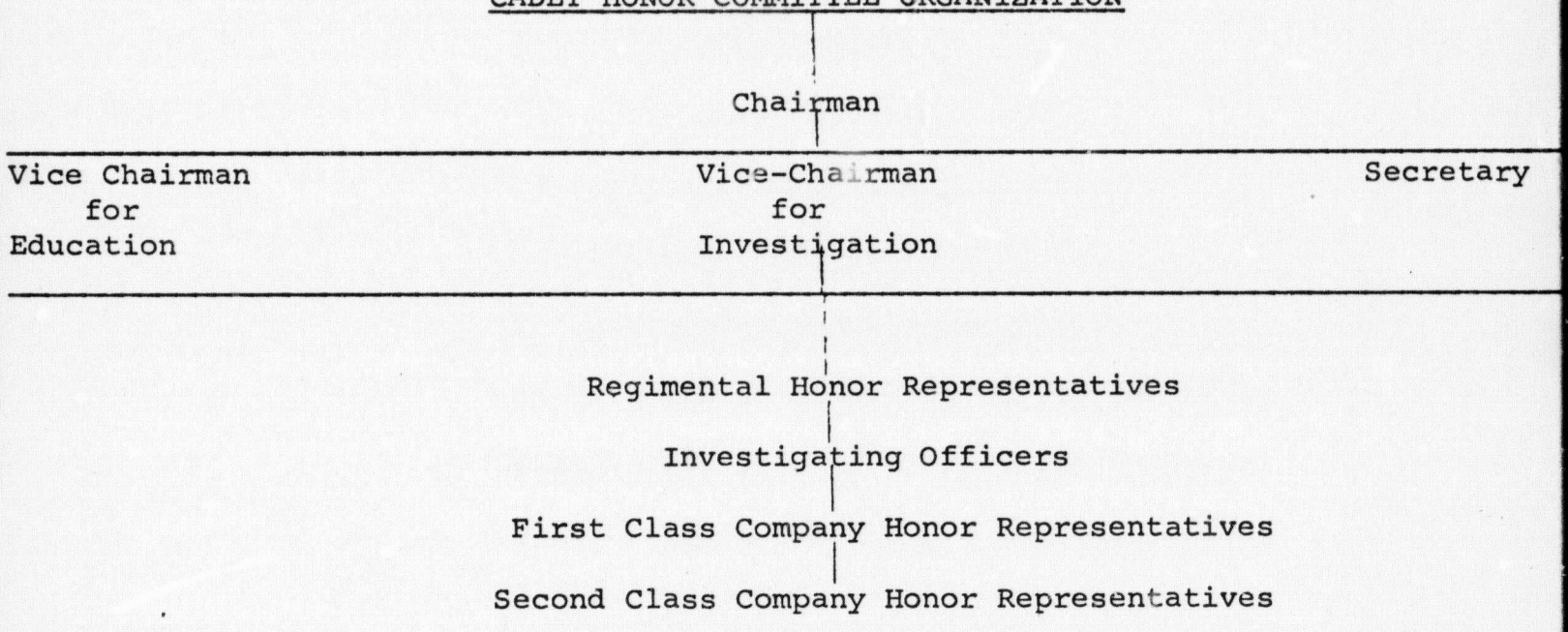
2. Specifically they will:

a. Conduct the orientation for new instructors in academic departments.

b. Provide agencies with written information to include Honor Committee rosters, case briefs, current policies, etc.

c. Assist in providing answers for questions raised by the different agencies with regard to the Honor Code, Honor System, or Honor Committee.

d. Assist the Regimental Honor Representatives with possible honor violations rising from the various agencies, to include a briefing on the committee's findings.


CADET HONOR COMMITTEE ORGANIZATION
Chairman
Vice Chairman for Education
Vice-Chairman for Investigation
Secretary
Regimental Honor Representatives
Investigating Officers
First Class Company Honor Representatives
Second Class Company Honor Representatives

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II. HONOR COMMITTEE CASE HANDLING PROCEDURES

A. PRELIMINARY INVESTIGATION:

1. When a possible honor violation is reported to a Company Honor Representative, he will:

a. If the possible honor violator is in his company, notify his particular Regimental Honor Representative immediately that an honor investigation is pending in his company and inform him of all details of the suspected violation. If the individual in question has not been notified that he is under investigation, the Company Honor Representative should notify him at this time.

b. If the possible violation is in another company, notify the Company Honor Representative of the company involved and inform him of all details of the possible violation. The Honor Representative of the company involved will immediately comply with "a" above.

2. If the possible violation involved academic cheating, the Regimental Honor Representative will notify the department honor liaison cadet for the department involved and inform him of all details of the possible violation. The department honor liaison cadet will then notify the department honor liaison officer and inform him of all details of the possible violation and assist the Regimental Honor Representative in his investigation. The Regimental Honor Representative will insure that the Company Honor Representative has been informed of the case.

3. The Regimental Honor Representative will immediately open and maintain a folder to contain all notes, statements, and evidence concerning the possible violation, and complete the folder checklist prior to sending a case to a full board.

B. INVESTIGATION:

1. Whenever a Regimental Honor Representative questions any individual concerning a suspected honor violation, he will insure that a Company Honor Representative is with him to act as a witness. Detailed notes will be taken of everything that is said, which will then be included in the folder. NOTE: Whenever any investigation is taking place, all members of the Honor Committee will be in a complete, neat, and proper uniform).

2. The Regimental Honor Representative will then confront the suspected violator, and follow these procedures:

a. Advise him verbatim, "(Cadet Suspect), you are under investigation for a possible violation of the Honor Code by (Lying, Cheating, Stealing, etc). I am (Investigator), the Regimental Honor Representative assigned to investigate the charges against you, and I want to ask you some questions."

b. Briefly explain the nature of the possible violation to the suspect.

c. Ask the suspected violator to prepare and sign a written statement explaining all that he knows of the suspected violation if he has not already done so for the Company Honor Representative.

d. At this point the Regimental Honor Representative will ask the suspected violator questions concerning specific details of the possible violation. All additional information given by him will be included in the written statement prepared and signed by the Regimental Honor Representative.

e. If the suspected violator will give verbal statements but prefers not to put them in writing, the Regimental Honor Representative will prepare and sign a written statement of the suspect's testimony with the hlep of the honor representative who was present.

3. The Regimental Honor Representative will then confront every individual who has, or might possibly have, any knowledge of the suspected violation. Evidence will be gathered to evaluate the validity of every detail of the information the suspected violator may provide. When questioning any individual, the Regimental Honor Representative will insure that he has one or more witnesses with him that he provides the individual the same

advice he has given the suspect, and that information provided is included in a written statement prepared and signed by that individual. It is imperative that all aspects of the possible violation are thoroughly and carefully investigated to include aspects favorable to the suspected violator.

4. If, on the basis of the evidence gathered in the investigation, the Regimental Honor Representative is certain beyond any doubt that an honor violation has not occurred and decides that a sub-committee is not necessary, he will forward the folder on the suspected violation to the Vice Chairman for Honor Investigation. The cadet will review the notes, statements, and evidence contained in the folder and if he concurs with the decision of the Regimental Honor Representative will approve the recommendation. If the Vice Chairman does not agree with the decision of the Regimental Honor Representative, he will consult the Chairman. If the Chairman agrees with the Regimental Honor Representative, the case will be dropped. If the Chairman agrees with the Vice Chairman he will direct the Regimental Honor Representative to initiate a sub-committee. No one will tell any cadet that the case is finished, etc., until after the Vice Chairman for Honor Investigation has made his decision. Following a decision not to bring the case to a formal investigation, all parties, officers and cadets, involved in the case should be notified by the Regimental Honor Representative and the Honor Committee Liaison.

5. If, on the basis of the evidence gathered in the investigation, the Regimental Honor Representative decides that further investigation is necessary, he will make the necessary arrangements.

6. The suspected violator will be given formal notice of all decisions concerning the disposition of his case in the form of a typed letter.

7. The Vice Chairman for Honor Investigation will be notified of them.

C. SUB-COMMITTEE:

1. The Regimental Honor Representative will determine the time and place to conduct the sub-committee. The Regimental Honor Representative will be responsible for the supervision of all aspects of the sub-committee. Investigations will be conducted on a non-adversary basis. Questioning will not be unduly prolonged and will avoid any element of coercion, duress, or undue influence.

2. The Regimental Honor Representative will be encouraged to contact the Honor Committee legal advisors for advice concerning the case prior to the time of the sub-committee.

3. The sub-committee will be constituted by three impartial Company Honor Representatives of the same regiment as the suspected violator who are not otherwise disqualified. A rotating roster will be used consisting of first and second class honor representatives which the Regimental Honor Representative will consult calling the first name on the list and so forth until he has three qualified members. At least one member shall be a first classman and shall be designated as the president of the sub-committee. First and second classmen from the same company will not be enpanelled.

4. The Regimental Honor Representative will notify all members of the sub-committee. The suspect and all witnesses will be notified of the time and place of the hearing in writing (form letters) these letters to be added to the suspect's folder. (See Annex A and B for examples of form letters.)

5. The sub-committee will be conducted in the following manner:

a. A first classman will act as the President of the sub-committee (until the date designated by the Chairman, when second class cadets will begin to take over the operation of the Honor Committee).

b. The Regimental Honor Representative will brief the sub-committee of the basic facts gathered during the investigation in an impartial manner. The suspected violator will not be present at this time.

c. Before the suspected violator is questioned, he will again be informed of the offense to which he is suspected, advised that he is not required to make a statement and be given the opportunity to challenge members of the sub-committee for cause.

d. The suspected violator will be shown the copy of his original statements concerning the suspected violation and will be asked to read it aloud, make changes and/or additions and to initial any such changes and/or additions.

e. At this time, the suspected violator should orally recite any additional facts pertaining to the suspected violation.

f. Members of the sub-committee may question the suspected violator after he has read the statement.

g. The sub-committee will also question any other individual who might have knowledge of the suspected violation. If the witnesses have made any prior statements he should read through and make any changes in writing which are recorded separately.

h. Any new or conflicting information obtained during the sub-committee will be included in a written statement prepared and signed by the individual providing the information and added to the other documents in the suspect's folder.

6. After questioning, the suspected violator and any other individuals being questioned will be dismissed. The sub-committee will discuss whether or not the suspected violator should be brought before an honor board. A decision of one member of the sub-committee that the case should be brought before a full board will be binding. (NOTE: All individuals both officers and cadets) will be present to give testimony and be questioned by the sub-committee. Do not depend on written statements. The purpose of the sub-committee is to determine if there is a conflict with the Code which a full board should judge. The sub-committee does not decide if an honor violation has then been committed.)

7. The Regimental Honor Representative will then insure that all notes, evidence, and statements are in the case folder and forward the folder to the Vice Chairman for Honor Investigation with the sub-committee recommendation. Following a decision not to bring a case before a full board, all parties-

officers and cadets, involved in the case should be so notified in writing.

8. The sub-committee will be taped and the tape will be submitted to the Vice Chairman for Honor Investigation along with the suspect's folder.

9. If the sub-committee should decide that the suspected violator should go before an honor board, the Regimental Honor Representative will:

a. Notify the Vice Chairman who in turn will contact the Secretary, who will decide a time and place to conduct the honor board.

b. If there is a possibility that the case involves a serious offense under military law, the Deputy Commandant should be briefed. If the offense is considered serious enough, honor inquiries will be suspended until after the offense has been investigated under military law.

c. If academic cheating was involved, insure that the department honor liaison cadet notifies the appropriate department honor liaison officer, and makes arrangements for members of the department to attend the honor hearing (if open) or to act as witnesses.

10. The Secretary will:

a. Notify the suspected violator in writing that he is to be a respondent before a full board and the time it is to meet. Insure that the cadet in question has sufficient time (at least three days) to prepare for his board.

b. Notify the suspected violator of the specific allegation which was drawn up at the sub-committee and of certain rights which he has when appearing before an honor board (see Annex C).

c. Notify all witnesses of the time of the honor board proceedings in writing (see Annex D.)

NOTE: All documents will be in the suspect's folder prior to the time it goes to a full board. Copies will be made of appropriate documents for use at the full board.

D. EXPLANATION OF FULL HONOR BOARDS:

1. When a hearing is scheduled, the Honor Committee Secretary will schedule twelve honor representatives from a rotating roster to hear the case as voting members of a full honor board (see Annex E.) Only first class honor representatives will vote on honor cases until a date to be selected by the Honor Committee Chairman, when a combination of first and second class cadets may comprise the board. At a date after 1 April of each year, to be selected by the Honor Committee Chairman, boards are authorized to be fully comprised of cadets, from the second class. All suspects will be asked to sign a letter stating that they have been advised of the Honor Committee procedures (see Annex F.)

2. Two non-voting second class honor representatives will serve as recorders for the honor board. (They will prepare a summary of the case.) Another will serve as sergeant-at-arms to take roll, operate the tape recorder, and assist in maintaining order.

3. The honor hearing will be presided over by the Chairman of the Honor Committee or, if so designated, or another member of the Honor Committee Executive Staff (except the VC-IN) who normally will not vote unless he becomes one of the required twelve members of the board. Prior to the appearance of the suspected violator, the Chairman of the Board will insure that the investigation folder is available and complete with all of the necessary items accomplished on the check list. Copies of pertinent documents will be provided for members of the Honor Board. All witnesses and the suspect will be notified in accordance with Annexes C and D.

4. The hearing will be conducted as follows: The Regimental Honor Representative will brief the board on the facts of the case. The suspected violator will be advised of his rights and asked to give the board his explanation of the situation. If he elects to testify, he may be questioned by the board concerning any aspect of the case. The suspected violator will be present in the room for all testimony. Following his own testimony, and the testimony of the witnesses that the board has called, the suspected violator may call any person to testify in his behalf. The witnesses will remain outside the hearing room until they are called for their testimony. All witnesses may be questioned by the board.

5. Following a break after the testimony has been given, the board will be closed for deliberations. Only voting members the Chairman of the Board, and the Regimental Honor Representative will participate in deliberation. The board will be called to order to commence the deliberations.

6. The board will discuss and vote by secret ballot on the guilt or innocence of all allegations considered during the hearing.

7. A verdict of guilty must be unanimous on the part of all voting members of the board.

8. If during the board proceedings it becomes evident that there is evidence which may support another allegation which is materially different from the one under investigation, the board will form the new allegation but will take no action on it until it has been given the appropriate preliminary investigation. If the difference is not material, the suspected cadet will be informed of the amended allegation and given the opportunity to present evidence with respect to such amendment.

9. After the final verdict is determined, the suspected violator will be informed of the decision.

10. The cadet found not guilty will be returned to the Corps in good standing and without prejudice. The Chairman of the board will remind all cadets present at the meeting that all matters discussed at the hearing are confidential and should not be discussed outside the room with anyone other than an honor representative.

11. A case summary of all guilty cases will be written and published to the Corps. Prior to departing the hearing room, the honor board will determine for the recorder the significant facts which should be included in the case summary.

12. If significant new evidence is produced following a hearing resulting in a guilty finding, this evidence will be presented to the board which voted on that case. If a majority of the board (including the Chairman) vote that the case should be re-opened to hear the new evidence, a new board may be convened and the entire case will be reheard. Unless unusual, unforseen evidence is uncovered, a not guilty case will not be reopened.

13. Prior to leaving the room at the end of an Honor board,

all Honor Representatives may answer questions informally from the gallery.

E. PROCEDURES FOR CONDUCT OF A FULL BOARD:

Read the following pre-hearing and hearing instructions. "May I have your attention. This honor hearing will now come to order. All cadets seated in the audience are reminded that this is a formal hearing and they will refrain from smoking and talking. When the hearing begins, the suspected violator will be asked to explain the circumstances of the case after which the board members may individually question the suspected violator about the case if the suspected violator elects to testify. If anyone in the audience knows any fact which should be brought to the attention of the committee they will write it down on available paper and hand it to the Sergeant-at-arms during a break, who will notify me. If you have been called as a witness or feel you may want to testify as a witness, please notify the Sergeant-at-arms in writing and leave the room and wait in the witness room.

When all evidence has been taken this honor hearing will be adjourned and the board will recess for a short period prior to beginning deliberations. Under no circumstances will the facts of the case, or any other case, be released to the general public. During the proceedings no member of the gallery will have either written or verbal correspondence with the suspect or members of the Board. If there is a disturbance by one person, he will leave the room. If there is a disturbance by two or more persons, the room will be vacated. However, if at any time a member of the gallery has a question, they will write it down on the available paper and hand it to a Sergeant-of-Arms. If these procedures are not followed exactly, the room will be cleared. Are there any questions on these procedures from the gallery?" Will everyone please stand while the suspect enters the room.

"Cadet_____, this honor board has convened to hear evidence and make findings concerning certain allegations that you violated the Honor Code by (lying, cheating, stealing, or toleration), in that on or about_____you did
(date)
_____.

Around this table are twelve honor representatives--excluding myself (if applicable)--who will vote on your case. You have the right to object to any member if you feel that member

cannot render a fair and impartial decision in your case. You must state the reason for your objection and the matter will be decided by a majority vote of the remaining members. Do you wish to object to any of the voting members or myself?

Cadet_____, you are advised that you are entitled to remain for all testimony. You will be given an opportunity to call witnesses and to present any relevant evidence you may wish to offer. You may testify in your own behalf. If you wish to bring out a point or ask a question of a witness you should write the question down and hand it to your advisor who will ask the question for you. At no time will you make any verbal statements except when testifying. You must follow these procedures exactly or you will have to leave the room. During these proceedings you may be asked to disclose any relevant information you might have. However, if you prefer not to testify, you will not be required to do so. The board will call any witnesses you desire to testify in your behalf. You will not at any time have either verbal or written communication with anyone in the gallery. If the procedures of this board are not followed exactly the room will be cleared. At this time the Regimental Honor Representative will give his briefing. (After the briefing has been completed the following procedures will be used).

Cadet (respondent), would you read to the board your statement prepared for the Honor Committee. (Give time of situation, date or action about which you want suspected violator to discuss). After the suspect has read the statement and made any clarification or additions he desires, the questioning will begin. (Ask opening questions based on suspected violators testimony to gain clarification for the board. Then allow other board members to start questioning. Questioning will be done in a counter-clockwise manner starting with the Chairman and continuing around the table until there are no more questions. When an honor representative is finished questioning or has no more questions he will turn his head to the right to signal to the next cadet that he is finished. "Cadet (suspected violator) do you have any witnesses or other evidence you would like the board to consider?" Additional witnesses will be questioned in the following manner:

TO ALL WITNESSES:

"Cadet_____, this board has been convened to hear evidence and make findings concerning certain allegations that Cadet (respondent) violated the Cadet Honor Code on or about _____by (lying, cheating, stealing, or toleration)."

"Are you aware of the nature of the allegation?"

"Will you please read to the board your statement prepared for the committee explaining any points you feel are necessary?"

TO THE BOARD:

"Does the board have any questions?"

TO THE SUSPECT'S ADVISOR:

"Do you have any questions?"

TO THE WITNESS:

"Thank you, Cadet_____. The Honor Committee appreciates your appearing before the board. You are excused for later recall." The Sergeant-at-arms will then check the witness room for the next witness until all witnesses have testified.

Prior to the time the board goes into deliberations, the suspect will be given the opportunity to comment on the testimony of any evidence presented.

TO THE SUSPECT:

"We have asked you back on the stand for two reasons: First, to let you clarify or comment on any testimony you wish and second, to give the board a chance to ask you questions prior to the time we go into closed deliberation. Do you have any further testimony for the board at this time?"

After the cadet has clarified any conflicts he will be asked:

"Do you have anything else to say to the board before it adjourns for closed deliberation?"

TO THE SUSPECT: (After the questioning and remarks are over).

"You will not be allowed to stay in the room for the deliberations. After the committee has reached its decision you will return for the verdict. You are reminded that for your own protection this hearing is confidential. You are now excused while the board deliberates your case." (The suspect will leave the room).

TO THE AUDIENCE: (After the suspect has left the room).

"The audience may not remain for the deliberations. However, you may wait outside for the Committee's decision. You are reminded that any disturbances will cause the area to be cleared. This board is closed."

After the board has finished its deliberation, and is prepared to vote, the gallery will be allowed to reenter the room for the vote. The allegation will be read aloud by the Chairman, and all Honor Representatives will vote by secret ballot. The Chairman will collect and count the ballots. The Chairman will then open each ballot and read all twelve ballots before announcing the verdict of the board.

TO THE GALLERY:

"The Cadet Honor Committee after consideration of the evidence in the case of Cadet_____, Company_____, Class of _____, has found him guilty/not guilty of the allegation." Any cadet who has questions of the board will please remain after Cadet_____has been informed of the board's decision and the Honor Representatives on this board will try to answer any question you have."

"Will the Sergeant-at-Arms ask Cadet_____to reenter the room for the board's verdict."

TO THE ACCUSED:

"Cadet_____, the Cadet Honor Committee has considered and voted on the following allegations:

_____

_____.

This board has voted you (guilty/not guilty) of the allegations."

If the cadet has been found guilty the following will be added:

"_____and will recommend to the Superintendent that you be separated from the United States Corps of Cadets."

If the cadet has been found not guilty the following will be added:

"_____and no further action will be taken.

THE CHAIRMAN WILL THEN SAY:

"This board is dismissed."

F. PROCEDURES FOR CADETS FOUND GUILTY:

1. Implicit in each finding of guilty by an honor board is a request that the guilty man submit his resignation from the Corps of Cadets for violating the Honor Code. However, he has other alternatives which must be made clear to him. He will be referred to the Deputy Commandant and the Department of Law for advice concerning the alternative courses of action.

2. The following procedures are to be followed after a finding of guilty.

a. The accused cadet will be billeted in the transient barracks and the Officer-in-Charge will be advised of the cadet's status by the Chairman of the board. The cadet will normally be escorted by a guard at all times.

b. The Tactical Officer and Company Commander will be advised immediately of the results of the hearing by the Company Honor Representative.

c. The cadet will be advised and encouraged to call his parents as soon as possible. This call is to explain the situation to them and the alternatives available to their son. The cadet should be permitted to speak to his parents in private and to choose the time of calling.

d. Normally on the morning following the honor hearing, the cadet will be referred to S1, USCC and then to the Law Department for legal advice if he so requests.

e. If he elects to resign, he will be processed quickly. Following this decision, he will not attend further classes. At the appropriate time he will be scheduled for an exit interview with the Deputy Commandant of Cadets.

f. Following his exit interview, the cadet is turned over to Cadet Personnel for out-processing. Until this processing is complete, the cadet will be billeted in the Transient Barracks and will attend all meals with the Guard.

g. The Vice Chairman for Education may contact the cadet and request a taped exit interview for use in the education of the Corps. If the cadet agrees, it will be the responsibility for the Vice Chairman to arrange the interview and secure a signed statement from the guilty cadet stating, "I am giving this interview of my own free will and authorize the Cadet Honor Committee to use it for honor instruction at the United States Military Academy."

3. The Vice Chairman for Honor Investigation will notify in writing all persons involved--officers and cadets of the results of the board. In academic cases, the department concerned should be notified of the results immediately. The liaison to that department who will have been present at the board will go to the department personally and conduct a briefing of the case.

4. Cases involving findings of guilty by a cadet honor board when the accused cadet elects not to resign may be referred to a Board of Officers conducted in accordance with AR 15-6. The cadet who elects not to resign may attend all classes until he is separated by Department of the Army. However, if the cadet is found guilty, he will lose all academic credit since the time of the alleged violation. The cadet will be assigned legal counsel to represent him at the board.

5. If the Superintendent so elects, the case will be sent to a Board of Officers for their findings. If the Board finds insufficient evidence in a particular case, the cadet will be returned to the Corps. In this case the board will send their findings to the Chairman of the Honor Committee. If the Board of Officers finds that the allegation is supported by substantial evidence and this is approved by the Superintendent, the case will be forwarded to the Department of the Army for final action.

III. SPECIAL INSTRUCTIONS

A. INSTRUCTIONS FOR REGIMENTAL HONOR REPRESENTATIVES:

Upon receipt of an assignment to investigate a possible honor violation, you should treat the case as an investigation of an event, rather than of a person. Initially, avoid asking the suspect what he did. Instead, save the questioning of the suspect until last or almost last. It may turn out that you are focusing on the wrong set of facts or there may be another suspect. Theoretically, your job is to find out what was done and then who did it. (Later at the Honor Committee full board and Board of Officers, we will start with the who and determine if the event applies to him. Let the prosecution and defense be presented at those hearings, your job is to investigate.

Organization: When given a case, sit down and analyze the information you have in the same manner you would in an estimate of a military situation: Something was stolen; suspicious answers appeared on a writ; apparently incorrect information was received, etc. First, interview the source of the report no matter who it is. For example, in a plagiarism case speak with the instructor who reported it. DO NOT rely solely upon a forwarding memorandum. Prepare a logical plan for resolving the problem. Make a list of questions which must be answered to establish conclusively either the existence or non-existence of the violation. Do not forget to plan for the administration of the investigation. Have at your disposal note books and other recording devices. Immediately open a folder on the suspect(s) and keep it up to date. Prior to handing the case folder over to the Vice Chairman for Honor Investigation, the Regimental Honor Representative will complete the Regimental Honor Representative Check List (See Annex G).

B. INSTRUCTIONS FOR HONOR COMMITTEE ADVISOR:

Before undertaking this duty, be certain that there is no conflict of interest. While this duty is normally performed by the Honor Representative of the company to which the cadet appearing before the Honor Committee is assigned, this Representative, in no small number of cases, is a witness against that cadet. When such is the case, he may not be the advisor even if the cadet concerned requests him. This will avoid not only the evil, but also the appearance of evil.

When the Company Honor Representative is disqualified from participation as advisor that duty will normally go to the second class representative, if the concerned cadet is of one of the lower three classes. If he is a first classman or if the second class representative is also disqualified, the duty will go to a qualified representative from another company of the same regiment.

Duties of the Advisor: The advisor may not enter into a confidential relationship with the cadet concerned. That is, anything the latter says may be used against him at any subsequent hearing. That point should be made clear at the onset. After that the cadet should be informed of all his rights at the hearing. The tone of the procedure should be private and informal, conducted without traces of either hostility or sympathy.

Consistent with the rules of procedure of the Honor Committee the following checklist will be used: (NOTE: The checklist must be regularly verified as the rules of the Committee are changed.) When any honor representative is given the job of Cadet Advisor he will immediately contact the suspect and begin his duties with the following statement to the suspect:

"I have been appointed your advisor to assist you in your preparation to appear before the Cadet Honor Committee. At the outset, I wish to remind you that whatever you say to me is NOT confidential. Should you make any disclosure which would indicate your culpability for the violation with which you are being investigated, I am bound under the toleration clause of the Honor Code to report it.

"If at any time during this briefing you have any questions about the procedures which will be followed, do not hesitate to ask.

"The general allegation being investigated is whether you did at_____(West Point etc.) on or about_____, violate the Cadet Honor Code by (Lying, Cheating, Stealing) or tolerating, more specifically, that you_____
_____
_____

"At the end of the hearing the Honor Committee will vote on whether you have committed this violation or one substantially the same. The vote is by secret written ballot and must be unanimous for the alleged violation to be considered valid.

"The hearing will be conducted at_____hours, on_____, at_____. Your presence is requested. You will be permitted to be present throughout the entire proceedings except during periods of deliberation and voting. The deliberation may be over matters which pertain directly toward your involvement in the alleged violation. This is normally done near the end of the hearing. However, from time to time during the proceedings, the Committee may wish to discuss procedural matters which may be done outside your presence. I will be present at the hearing but I am not your spokesman. You must conduct your case as monitored by the Chairman, according to the Cadet Honor Committee's procedures.

"Your own statement may be requested during the hearing. However, no one may require you to make a statement. Should you elect to make a statement, be sure to pay attention to the question so that your answer will be unequivocal, clear, and to the point. If you do not understand a question, ask for clarification before you answer it. You may wish to have present at the hearing your own witnesses who will present matters on your behalf. It is my duty after this briefing to determine who, if anyone, you desire present.

"Normally, the hearing is open to cadets and officers on the staff and faculty. You may, however, ask to exclude certain classes of cadets or officers as you desire. Such requests are usually granted unless, for example, there is good reason why a particular member or members of a class should attend. Likewise, for good cause, the chairman may exclude any or all of the normally authorized observes. (NOTE: The advisor should attempt to know if the Chairman intends to keep the hearing closed before he gives his briefing to the suspect.)

"Let us know of your decision as to what witnesses you may wish to call (Here, the advisor, knowing the allegation, must develop the case by asking the suspect if certain people could give relevant testimony on his behalf. This depends upon not only when the incident occurred but also upon background witnesses, for example, in a plagiarism case, the roommate who saw him working on the paper.) If you think of any others even right up to the time of the hearing, let me know and I will attempt to

get them, but remember, the earlier the better."

This information will immediately be transmitted to the Regimental Honor Representative by the Advisor. The Regimental Honor Representative will enclose it in the suspect's folder. NOTE: (The Advisor will ensure that the suspect understands all of the procedures of the board well in advance.)

A "Certificate of Advisor" must be filled in prior to the hearing, and turned in to the Regimental Honor Representative for entry into the record prior to the time it is given to the Vice Chairman for Honor Investigation. (See Annex H).

C. SPECIAL INSTRUCTIONS FOR THE HONOR BOARD CHAIRMAN:

1. During questioning by board members, if you believe some part of the witnesses testimony or answer needs to be clarified, it is your prerogative to ask him a question at any time.

2. Make sure board members, suspected violator, and witnesses are talking loudly enough.

3. If talking in the audience occurs, ask for quiet in the room. Insure that the audience is listening to testimony. If the disturbance continues, order the offenders to leave the room or close the hearing. Absolute firmness is critical in dealing with a large audience.

4. Insure that no one talks to board members or witnesses during testimony, deliberation, or breaks.

5. Try to avoid questions which are repetitive.

During Deliberation:

1. Maintain order during the deliberations.

2. Open up discussion by clarifying different areas of possible violations. Discuss every aspect of guilt or innocence before voting.

3. Remember the accused is to be judged as a reasonable man

and that guilt is to be proven beyond a reasonable doubt, not beyond all doubt or to a mathematic certainty.

4. Write out reasons why the "guilty" or "not guilty" decision was reached.

5. Summon the accused and announce the decision to him. Then dismiss the board.

6. If the cadet is found not guilty, the Chairman may counsel him as he deems appropriate.

IV. PROCEDURES FOR REVIEW AND REMOVAL OF HONOR REPRESENTATIVES FOR CAUSE

IV. PROCEDURES FOR REVIEW AND REMOVAL OF HONOR REPRESENTATIVES FOR CAUSE:

A. Convening:

At the request of the Chairman of the Honor Committee.

B. Review Committee Membership:

Chaired by Vice-Chairman for Honor Education (may be the Vice Chairman for honor investigation if he did not investigate the case on the Honor Representative in question).

Secretary, Honor Committee.

Two Regimental Honor Representatives.

Four Honor Representatives at large (from a different regiment).

C. Preliminary Procedures:

1. At the direction of the Chairman the Vice Chairman for Honor Investigation or designated representatives will investigate the reason why the representative is deemed unworthy of being an honor representative.

The primary duty of the investigator(s) is to collect and evaluate evidence which establishes the degree of a representative's competence. Pertinent evidence in such an investigation may take several different forms:

a. Verbal statements by the representative that undermine the Honor Code, Honor System, or Honor Committee.

b. Inability on the part of the representative to make a wise decision at an Honor Board. (This will be based on several instances and other than one, unless that single instance is so serious that it shows a complete inability to make a decision.)

c. Instances of dereliction of duty.

d. Statements evaluating the performance of the cadet as an honor representative by those in authority in his company as well as members at large from his company.

2. The representative will be briefed on the nature of the evidence at least 24 hours prior to the hearing, in the presence of the Chairman of the Honor Committee.

D. Committee Proceedings:

1. The Committee will be briefed by the Vice-Chairman for Honor Investigation or his delegate as to the nature of the evidence against the representative. They may ask any clarifying questions that they desire.

2. The representative will be brought into the room and asked about his attitudes in general and about the specific actions which contributed to his deficiency as reported by the investigating official.

3. After questioning is completed, the Board will deliberate on the proficiency of the Honor Representative.

4. The decision as to the competence of the Honor Representative in question will be made by a simple majority. The Vice-Chairman of the Committee will vote only in case of a tie vote by the Committee.

5. The Committee proceedings will be recorded on tape and a written summary by the Vice Chairman and will be submitted to the Chairman and will be closed to all personnel except the Honor Committee.

E. The Honor Representative then has two choices:

1. To resign from the Honor Committee.

2. To have the evidence presented to his entire company, which will then vote on his competence again, using the simple majority.

If the Honor Representative resigns, no information as to the reason for his resignation will be released.

V. HONOR COMMITTEE RECORDS

V. HONOR RECORDS:

1. The Cadet Honor Committee will maintain complete records regarding all aspects of the operation of the Cadet Honor Committee. These records will include the details of instruction, specific cases, and general policy decisions.

NOTE: The records on specific cases include only those cases which have reached a full board. "Guilty" cases will be kept indefinitely; "not guilty" cases will be kept for six months only for possible use in interrelated cases, or upon the discovery of new evidence.

The records may also be used in statistical surveys of particular trends in the operation of the honor system. The conclusions of such surveys will guide the Committee's education program.

2. The following records should be maintained by the Honor Committee as a minimum.

a. Honor Case Summaries: Each honor case is given a case designation and the following specific information; date of hearing; name, service number, company and class of those cadets involved; alleged offense(s) of each; and findings on each cadet. Following each honor hearing, a case summary assigned this designator will be written to cover the facts of the case.

b. The folder for each case will include the cover sheet entitled "Honor Case File" (Annex I); evidence used in hearings such as written statements of witnesses; test papers; tape recordings of testimony; and any other written correspondence previously mentioned in these procedures. These records will be kept under lock at all times. The only persons to have access to this portion of the Committee's files are the Honor Committee Executive Staff.

VI. ANNEXES

ANNEX A

The following is an example of a letter which will be sent to the suspect three days prior to the sub-committee. A copy will also be sent to the cadet's advisor, and one other copy will be added to his file.

Cadet_____
Company_____
Class of_____
United States Corps of Cadets

1. The Cadet Honor Committee has formed a sub-committee to meet on_____at_____hours in the_____ _____.

2. A sub-committee is not formed to determine guilt or innocence. It is formed to determine if there is sufficient evidence of a conflict with the Cadet Honor Code to warrant convening a full honor board. The full honor board judges guilt or innocence.

3. The sub-committee will investigate,

_____
_____
_____.

4. Cadet_____,Company_____, Class of_____, has been appointed to be your advisor, but is <u>not</u> a counsel with whom you may share privileged communication.

5. The uniform for the sub-committee is_____. Report to_____ten minutes prior to the above stated time.

6. If you have any questions contact your advisor or myself.

_____
REGIMENTAL HONOR REPRESENTATIVE

_____ _____
(Company) (Class)

Room #_____

Telephone #_____

ANNEX B

The following is an example of the letters which will be sent to all witnesses (cadets and officers) who are to appear before a sub-committee. A copy of each will be added to the suspect's file.

DATE:_____

_____
(Name)

_____
(Company or Department)

_____
(USCC or USMA)

1. The Cadet Honor Committee has formed a sub-committee to meet on_____at_____hours, in the_____ _____to investigate (general nature of allegation to include name of suspect)_____ _____.

2. A sub-committee is not to determine guilt or innocence. It is to determine if there is evidence of a conflict with the Cadet Honor Code to warrant convening a full board.

3. The uniform for the sub-committee is_____. Report to_____five minutes prior to the above stated time.

4. If you have any questions, contact me at the number listed below.

_____
REGIMENTAL HONOR REPRESENTATIVE

_____ _____
Company Class

Room#_____

Telephone Number_____

ANNEX C

The following is an example of the letter which will be sent to the suspect three days prior to the full board. A copy will also be sent the cadet's advisor, and one other copy will be added to his file.

Date:_____

Cadet_____
Company_____
Class of_____
United States Corps of Cadets
West Point, New York 10997

1. The Cadet Honor Committee will conduct a hearing at 1930 hours, on_____in_____ to investigate the following allegation:

_____
_____
_____.

2. You have the following rights:

a. The right to remain silent.

b. The right to present evidence in your own behalf.

c. The right to have others present evidence in your behalf.

d. The right to be present during your board except for times when the board is deliberating.

e. The right to cross-examine all witnesses through your advisor.

f. The right to challenge any member of your board for cause.

3. Cadet_____, Company_____, Class of_____, has been appointed to be your advisor, but is not a counsel with whom you may share privileged communication.

4. The uniform for the full board is_____. Report to the_____fifteen minutes prior to the above stated time.

5. If you have any questions, please contact your advisor or myself.

_____
Name

_____
Rank

_____
Position

Room Number_____
Telephone Number_____

ANNEX D

The following is an example of the letter which will be sent to all witnesses (cadets and officers) who are to appear before the full honor board. A copy of each will be added to the suspect's file.

Date:_____

Name_____
Company or Department_____
USCC or USMA_____

1. The Cadet Honor Committee will conduct a hearing at_____hours, on_____ in_____to investigate the following allegation:

_____
_____
_____

2. The uniform for the full honor board is_____ _____. Report to_____ fifteen minutes prior to the above stated time.

3. If you have any questions, please contact me.

Name_____
Cadet Captain
Position_____

Room #_____
Phone #_____

ANNEX E

The following is an example of the memorandum which will be sent to Honor Representatives informing them that they are scheduled to sit on a full honor board.

Suspense_____
Date_____

MEMORANDUM FOR: Cadet_____
Company Honor Representative
Company_____,Class of_____

SUBJECT: Cadet Honor Board

1. You are scheduled to be a member of a full board for Cadet_____, Company_____, Class of_____.

2. This board will convene on_____, at_____hours in the_____ _____. The uniform is_____ _____. You will be present ten minutes prior to the above stated time.

3. If you are unable to sit on the board because of personal involvement with the accused or the case, or because of unusual circumstances, you will make arrangements for another Honor Representative to take your place.

4. Notify the Secretary, Cadet Honor Committee, of your intent to be a member of this board (or of your replacement) by the suspense at the top of this document.

_____
Cadet Captain
Secretary
Cadet Honor Committee

Phone #_____
Room #_____

ANNEX F

The following is an example of the form which each cadet having a full honor board will sign prior to the time his board has been convened.

1. I,_____, have been informed that I am to appear before an honor board at_____ hours,_____, to answer the allegation that I have violated the Cadet Honor Code by_____ _____.

2. I understand that consultation with third parties is permissible at any time prior to the board, that I may seek legal advice, that I may call my parents, and am limited in discussion of my case only insofar as concerns other cadets who may also be under suspicion.

3. I may present any evidence or call any material or character witnesses that I desire.

4. I understand the procedures that will be followed during the honor hearing, and the nature of the evidence and testimony in my particular case.

5. I understand that my advisor is not a confidant, but a procedural advisor to answer my questions.

6. I understand that I may request that the honor board proceedings be closed to cadets other than honor representatives. I request my honor board to be_____ _____ to cadets other than honor representatives.
open/closed

_____
Cadet Signature

_____ _____
Company Class

_____
(Honor Representative Signature)

_____ _____
Time Date

ANNEX G

REGIMENTAL HONOR REPRESENTATIVE CHECKLIST:

Initials

_____ The investigation and sub-committee are complete according to Honor Committee procedures.

_____ If it is a possible offense under the UCMJ the Deputy Commandant of Cadets has been informed of the nature of the case.

_____ The accused cadet has been advised of his rights and options concerning witnesses, closed boards, and his right not to testify, and concerning all procedures by which the Honor Committee operates.

_____ The accused cadet has been notified of the date, time and place of the hearing.

_____ All individuals involved with the case have been interviewed, and know the time, date, and location of the honor board.

_____
(Regimental Honor Representative)

_____ _____
Company Class

_____
Date

ANNEX H

The following is an example of the memorandum which all advisors will submit to the Vice Chairman for Honor Investigation prior to the time a full board is convened.

CADET HONOR COMMITTEE
West Point, New York

Date_____

MEMORANDUM FOR: Vice Chairman for Honor Investigation,
Cadet Honor Committee

SUBJECT: Certificate of Advisor

1. On_____,at_____hours, I advised Cadet_____according to the format established in the Honor Committee Procedures under "Instructions for Cadet Advisor."

2. I read to Cadet_____all appropriate parts of the procedures and answered any questions that he had.

3. I have the following remarks:

Signature_____

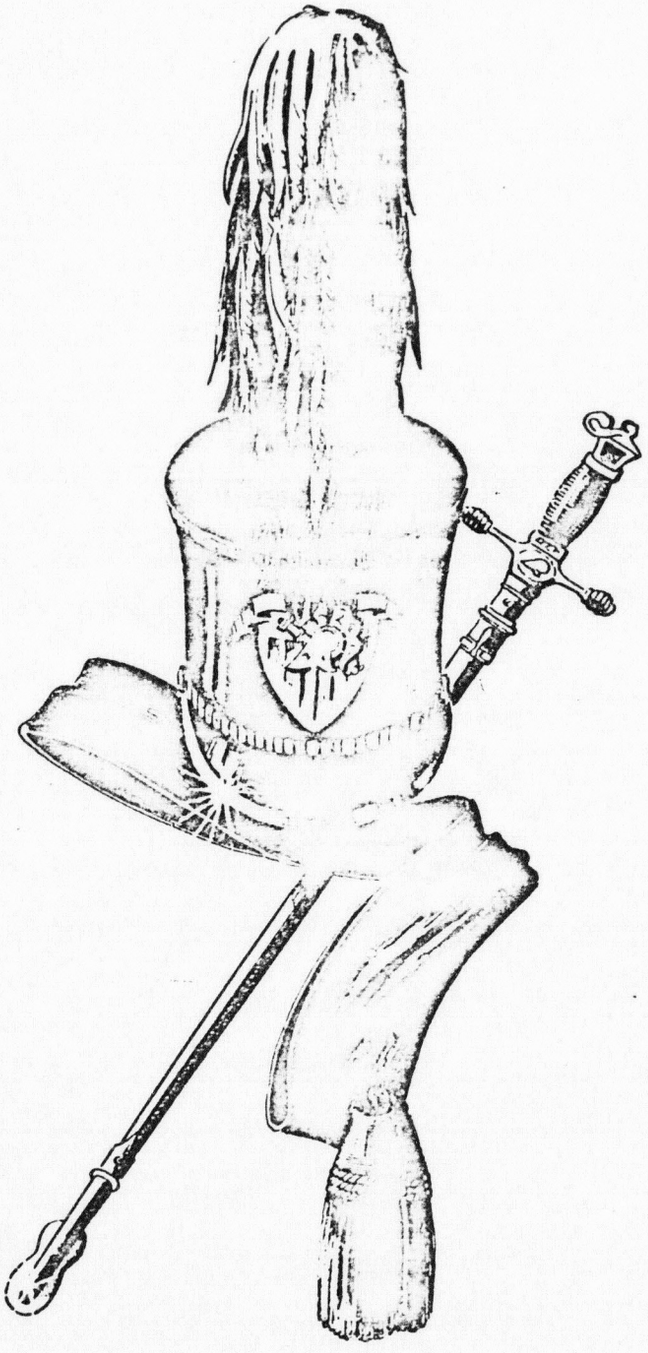
_____
Printed/Typed Name

_____ _____
Co. Class.
Advisor, Honor Representative

3_____	3_____
4_____	4_____
5_____	5_____
6_____	6_____

Allegation:_____
_____
_____.

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UNITED STATES MILITARY ACADEMY

WEST POINT · NEW YORK

HONOR INSTRUCTION

HONOR COMMITTEE
Class of 1976

New Cadet Training

1975

DUTY

HONOR

COUNTRY

DEPARTMENT OF TACTICS
USCC

Incl 1

A 186

HEADQUARTERS NEW CADET TRAINING
UNITED STATES CORPS OF CADETS
West Point, New York

INTRODUCTION

1. GENERAL: This booklet contains the Cadet Honor Committee's guidance for the administration of and instruction in the Honor System during New Cadet Training. Guidance is presented in a series of nine lesson plans to be used by Honor Representatives, the Cadet Chain of Command, and all New Cadets.

2. PURPOSE: New Cadet Training Honor Instruction is intended to educate and indoctrinate New Cadets in the Honor Code and System. The objective is to enable them to take their place as part of the Corps during Reorganization Week 1975.

3. BACKGROUND: Questions inevitably arise during the instruction for which no one answer exists. Honor Representatives are encouraged to address these questions to the best of their ability, emphasizing the honor concept, and then refer the questions to the Honor Committee for further development. Honor Representatives must insure they possess sufficient knowledge to explain the concepts involved in each lesson.

4. PRESENTATION: Honor Representatives must be enthusiastic during class presentations. They must also possess a working knowledge of all matters relating to Honor. Failure to do so, will negate all preparation that was put into each lesson.

5. CONCLUSION: Remember that education is the Committee's most important responsibility. To meet this responsibility Honor Representatives must ensure that each class is presented in the best possible manner.

William E. Anderson

WILLIAM E. ANDERSEN
Cadet Captain
Chairman, Honor Committee

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LESSON 1

LESSON PLAN

INSTRUCTIONAL UNIT:	Introduction to the History, Importance, and Meaning of the Honor Code
TYPE:	Lecture
TIME ALLOTTED:	50 Minutes
CLASS PRESENTED TO:	All New Cadets
TOOLS, EQUIPMENT AND MATERIALS:	None
PERSONNEL:	Honor Chairman
TRAINING AIDS:	1 Tape Recording of "Duty, Honor, Country" by General Douglas MacArthur, Viewgraph projector, and slides.
REFERENCES:	Booklet, Cadet Honor Code
STUDY ASSIGNMENTS:	None
STUDENT UNIFORM AND EQUIPMENT:	Duty Uniform
TROOP REQUIREMENTS:	None
TRANSPORTATION REQUIREMENTS:	None

I. INTRODUCTION:

Objectives/Reasons:

1. To state and explain the Honor Code of the Corps of Cadets.

2. To explain the reasons for the Code and its importance.

3. To outline the History and development of the Honor Code.

4. To instill the spirit of the Code in the Class of 1979 in preparation for their acceptance into the Corps of Cadets.

II. EXPLANATION:

A. Description: Statement of the Honor Code and explanation of its tenets.

1. Statement of the Code -- A cadet does not lie, cheat, or steal, nor tolerate anyone who does.

2. Lying is the telling of a falsehood with an intent to deceive. It must be understood that the nature of a lie is immaterial. A simple act of deception will not be tolerated.

3. Cheating is an intentional misrepresentation through fraud which allows one undue advantage.

4. Stealing is the third element of the Code; an explanation is not necessary. It must be understood that the value of an object is immaterial; it is the act of stealing which is not tolerated.

5. Tolerating is knowingly permitting a violation of the Honor Code to go unreported.

B. Reasons and Importance:

1. Reasons:

a. The Honor Code is the common bond among all cadets.

b. The Honor Code is intended to reinforce or build moral character and honesty.

c. The Honor Code establishes the ideal characteristics of the honorable man (and Army officer).

d. The Honor Code develops the uncompromising standards of honor essential to a military leader.

2. The Honor Code at the Military Academy is unlike that of any other institution.

a. The Honor Code is highly idealistic, but not unrealistic. It is essential to the development of professionalism and integrity, qualities which each of you as future officers must possess. The American public has continually assessed West Point graduates as being "honorable" men.

b. To attain this high standard, a 100% commitment must be

maintained throughout the Corps. This means you must not tolerat A 1
violations of the Honor Code. The task of maintaining the honor of the Corps rests squarely with each and every one of you. It is this wholehearted support of the Corps that makes this unique code of ethics an integral part of each individual.

C. History of the Code:

1. In 1816 Captain Partridge, then Superintendent of the Military Academy, took the first formal action against a cadet who had lied and separated him.

a. There was no formal code.

b. Honor was enforced by officers of the post.

2. Colonel Sylvanus Thayer, the next Superintendent, took an active interest in promoting and maintaining a high sense of honor among cadets. Some of the precepts he developed were:

a. A high standard of honor as exemplified in his triangular equation for leadership -- Honor, Discipline and Education.

b. The idea that the lives of men depend on their commander's sense of honor.

c. Specific standards--those who failed to meet them were forced to leave the Academy.

3. Initial cadet participation in problems of honor resulted in an unofficial group known as Vigilance Committee being formed.

a. It did not have the sanction of official authority.

b. Though not officially sanctioned, it was not disbanded.

c. This shift in the enforcement of the Honor Code from officers to cadets evolved into today's honor system -- that being, the cadet's policing their own ranks from within the Corps.

4. In 1922, General Douglas MacArthur, the Superintendent of the Academy, recognized and authorized the Cadet Honor Committee.

a. The new Honor Committee began a program of orientation, indoctrination, interpretation, and enforcement in the field of honor.

b. Although cadets formally replaced officers in 1922, the Honor Committee has undergone continued change. Today's Committee is still changing to meet the needs of the Corps. Remember that the System will change as time dictates, but the Honor Code is something

that never changes.

D. Spirit of the Code:

1. At this time let us examine the Code more closely.

a. "A cadet does not lie...." The Code requires complete compliance in both word and deed of all members of the Corps and permits no deviation from these standards. Not only is the cadet expected to tell the truth on all occasions, but also to avoid quibbling or evasive statements. There is no room for the half-truth in the Cadet Honor Code. All written and oral statements must be the whole truth.

b. "A cadet does not cheat...." All cadet work is done by the cadet himself. He must accept all the credit or the criticism for his work. If a cadet cheats, he has gained an unfair advantage by receiving credit for work that is not his own.

c. "A cadet does not steal...." The honor concept should be obvious but bear in mind that a cadet does not take for his own, even the smallest or cheapest article which belongs to another. We do not believe in minor cases. If you find that you have taken by mistake the property of another, return it to the rightful owner as soon as possible.

d. Finally, "A cadet does not tolerate any cadet who does lie, cheat, or steal." This is an important foundation of the Code which must be emphasized. There is an inherent association of honor and integrity with the Corps of Cadets. Violators of the Code detract from this relationship and cannot remain a part of the Corps. It is necessary for each of us to separate these violators from the Corps. To close your eyes to dishonorable actions is to condone them. This will not be tolerated.

2. Although the principles of lying, cheating, and stealing should be understood, you must remember that it is the spirit of the Code which allows us to carry it forward. Each of you is looked upon and expected to carry on the traditions of the Code with the highest personal standards. Members of the "Long Gray Line" look to you to keep their ranks unblemished.

3. In 1979 you will leave West Point with that intangible quality referred to as the spirit of the Honor Code, and the respect it generates. If you do not gain and carry this spirit with you throughout your military career, your four years here will have been a failure.

III. REVIEW/QUESTIONS AND ANSWERS:

Major objectives of lecture:

1. Know the Honor Code as stated.

2. Realize the importance of the Honor Code.

3. Gain an appreciation for the development of the Honor Code.

4. Realize that it is the spirit of the Honor Code that is the ultimate goal.

IV. SUMMARY AND CLOSING REMARKS:

Reflect on what you have heard today through the many trying moments ahead of you. Draw strength and determination from doing always what you know to be honorable and right. The statement of the Honor Code is less than fifteen words long but from this brief statement comes a way of life -- one upon which you have recently embarked. You must share the responsibilities of this statement -- it is ours to guard, protect, and uphold. It is an awesome responsibility, but you will be a better man for having lived it; a prouder man for having accepted it in spirit and in letter; and a richer man for the mark it will leave on your character.

LESSON 2

LESSON PLAN

INSTRUCTIONAL UNIT:	The Honor Code: An explanation of the basic tenets of Lying, Cheating, Stealing and Toleration.
TYPE:	Lecture
TIME ALLOTTED:	50 Minutes
CLASSES PRESENTED TO:	New Cadets in Company Groups
TOOLS, EQUIPMENT, AND MATERIALS:	None
PERSONNEL:	Honor Chairman
TRAINING AIDS:	Viewgraph, projector and slides
REFERENCES:	None
STUDENT UNIFORM AND EQUIPMENT:	Duty Uniform
TROOP REQUIREMENTS:	None
TRANSPORTATION REQUIREMENTS:	None

I. INTRODUCTION:

Objective and Reasons: To state and explain the four tenets of the Honor Code.

II. EXPLANATION:

A. Description:

1. Lying: Lying is the telling of a falsehood with the intent to deceive. It does not matter to whom you are talking or what the subject matter. Your statements must always be true. As a cadet you are required to tell the truth at all times, and also to avoid quibbling.

Quibbling is the telling of a half-truth, or the use of a technicality or loophole to deceive someone as to the pertinent facts. Doing some physical action with intent to decieve is also lying. For example, pretending that you are ill when you are not, or limping to make someone think you are injured, are deceptions that are the same as lying. As a cadet and a future officer you will be confronted daily with "official statements." This is a statement made in response to an official requirement or request. It is expected to be complete, correct, and responsive to the requirement. Some examples of official statements are:

a. Squad reports at formations.

b. Government documents.

c. Explanations of Report.

d. A signature

These will be discussed in greater depth later, when we discuss the interaction between honor and regulations at the Academy.

2. Cheating: Cheating is the taking of an unfair advantage over another. That is, in instances when required, any task you do must be your own work. During the academic portion of the year, most graded recitations must be your own work. Therefore, any help you get from another cadet is cheating, unless help is specifically authorized. Additional discussion of this area will be covered in the lesson concerning Honor and Academic Procedures.

3. Stealing: Stealing is self-explanatory. It is inconsequential how small or insignificant the item may seem to be. If the item is taken with the intent to keep it, stealing has occurred. "Borrowing" of items is something which occurs with the Corps quite frequently. If someone borrows an item from an individual, it is expected the borrower will inform the owner immediately, either by a note or orally.

4. Toleration: Toleration is an integral and important part of the Honor Code. It is defined as the willful failure to report an observed or known honor violation. This facet of the Code requires that the individual members of the Corps not only adhere to the Code, but also play a vital role in ensuring that the entire Corps adheres to the Code. It is the personal responsibility of every cadet to report an honor violation. Failure to do so is also a mark against the integrity of the individual and the Corps of Cadets. This is because the violation has not only occurred, but has also been condoned by someone else's failure to report it. As a result, toleration is a violation of the Code and will be dealt with accordingly.

B. Application: It is a common practice in American society to refuse to implicate a friend. Friendship appears to require that you take up for your friend regardless of the circumstances. This cannot be tolerated in the military. The maintenance of your honor and the honor of the Corps must be more important than friendship. The question is not whether the person is your friend, but whether he has the integrity required of a professional officer in the US Army. If he does not, he does not belong in the United States Corps of Cadets, nor does he deserve a commission in the US Army. Not everyone can keep the high standards of integirty required by the Code and essential to the military profession, and it is your responsibility to insure that this type of individual does not remain in the Corps and receive a commission.

C. What should you do if you suspect a violation?

First, talk to the person you think committed the violation. This is important to insure that your understanding of the facts is correct. Second, if the facts indicate that he has violated the Code, advise him to report himself. If he does not turn himself in, your third step is to go to your Company Honor Representative with your suspicion. When circumstances preclude direct confrontation, or when it seems inappropriate, report the suspected violation directly to your Honor Representative.

III. QUESTIONS AND ANSWERS: (To be developed by Instructor)

IV. SUMMARY AND CLOSING REMARKS: In this lesson the basic tenets of the Cadet Honor Code have been presented. Sometimes, it may become unclear as to what amounts to an honor violation, and what does not. Remember that the concept of Honor is a simple concept -- each individual already has the fundamental concept within him. The Code is the standard the Corps has chosen itself. Follow it, and your integrity will remain beyond reproach.

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LESSON 3

LESSON PLAN

INSTRUCTIONAL UNIT:	Review of Honor Code Tenets/ Explanation of Related Areas.
TYPE:	Lecture
TIME ALLOTTED:	50 Minutes
CLASSES PRESENTED TO:	New Cadets in Company Groups
EQUIPMENT AND MATERIALS:	Viewgraph, Slides
PERSONNEL:	Company Honor Representatives
REFERENCES:	Previous Lessons
STUDENT ASSIGNMENT:	None
STUDENT UNIFORM AND EQUIPMENT:	Duty Uniform
TROOP REQUIREMENTS:	None
TRANSPORTATION:	None

I. INTRODUCTION:

A. Objectives/Reasons: The role of the Honor Code should have become clear to you by now. However, the importance of the Code and its purpose is sufficient to warrant repeated emphasis. The Code is designed to reinforce your personal integrity, and to provide a standard for the entire Corps. In turn, the integrity nurtured at West Point must be carried over by its graduates into the Army, thus fostering integrity throughout the Army.

II. EXPLANATION:

A. Review:

1. "A cadet does not lie...." The Code requires complete compliance in both word and deed of all members of the Corps and permits

no deviation from these standards. Not only is the cadet expected to tell the truth on all occasions, but also to avoid quibbling or evasive statements. There is no room for the half-truth in the Cadet Honor Code. All written and oral statements must be the whole truth.

2. "A cadet does not cheat...." All cadet work is done by the cadet himself. He must accept all the credit or the criticism for his work. If a cadet cheats, he is taking an unfair advantage. Also considered cheating is any deception, verbal or by actions, which is intended to convey an erroneous impression. A deception to gain an davantage over others, or to avoid punishment is incompatible with the Honor Code.

3. "A cadet does not steal..." The Honor concept of this section should be obvious to all of you; but bear in mind that a cadet does not take for his own, even the smallest or cheapest article which belongs to another. We do not believe in minor cases. If you find that you have taken by mistake the property of another, return it to the rightful owner as soon as possible.

4. Finally, a cadet does not tolerate any cadet who lies, cheats, or steals. This is an important foundation of the Code which must be emphasized. There is an inherent association of honor and integrity within the Corps of Cadets. Violators of the Code detract from this relationship and can no longer remain a part of the Corps. It is necessary for each of us to separate such individuals. To close your eyes to dishonorable conditions is to condone them. This will not be tolerated.

b. Related Areas:

1. The Honor Code and the Army: The Officer Corps of the US Army has a tremendous responsibility. The faithful execution of these responsibilities is based upon the integrity of the Officer Corps and of each individual officer. The consequences of a lapse in integrity can be grim, sobering, and costly.

Example: The incident is reported of an officer who was responsible for the reconnaissance of a specific area. When asked by his Regimental Commander about the area, the officer reported that enemy strength there was slight, although in fact he had made no reconnaissance at all. The Regimental Commander then committed a battalion of men into the area. Because enemy strength in the area was much greater than indicated by the false reconnaissance report, the entire battalion was lost. A lie by the officer who was charged with reconnaissance had unnecessarily caused the loss of lives. Thus, there is clearly an absolute need for personal integrity as an officer of the United

States Army. Our Honor Code is designed to reinforce those traits which will produce integrity within the Corps of Cadets, and in the Officer Corps.

2. Definition of Quibbling: Quibbling is the telling of a part truth, or the use of a technicality or loophole to deceive someone as to the pertinent facts. Elements that typically characterize quibbling are:

a. Evasive words or statements:

b. Technical or partial truths.

3. Relationship of Quibbling to the Honor Code: Quibbling is an honor violation. We do not differentiate between the man who quibbles and the man who cheats, steals, or lies outright.

a. Examples of Quibbling: Some examples of quibbling are:

(1) A delinquency report is written on you, with the date of the offense given as 21 July. You are asked if the report is correct and you answer that it is not, without giving any further clarification. You know, however, that the offense is correct but that it occurred on 20 July, not 21 July. This is quibbling. Your answer was an attempt to deceive. You used a technical truth, a half-truth, to achieve this deception.

(2) A statement made to evade answering a direct question is also quibbling. This causes the person asking the question to believe that the half-truth is the whole truth. The evasive statement has effectively deceived him. This deception is an honor violation.

(3) Whether or not a particular statement constitutes quibbling cannot be judged according to a hard and fast rule. In this area cadets should strive always to uphold the spirit of the Honor Code. "A cadet will not lie, cheat, or steal" must always be the basis for action. This will insure that any statement made by a cadet can always be accepted as the whole truth.

4. Honor Away from West Point (Social Honor):

a. Honor on Leave:

(1) The Honor Code is a way of thinking as well as an integral part of our lives. When away from West Point, the Honor Code is still

followed. Many compromising and unusual situations will develop while you are on leave. You may be confronted by friends or relatives who understand little about the Honor System. However, many civilians are familiar with the Code, and cadets, in general, are expected to adhere to high moral standards. You may be placed in a situation where a year ago, as a civilian, your actions would have been entirely different. But now you are new cadets at the United States Military Academy. You have an Honor Code to live by and it is your responsibility to support this Code. The general guidelines to follow in any situation while on leave is "Maintain your personal integrity and do not compromise your honor."

(2) Some practices are not in the spirit of the Honor Code.

(a) False I.D. Cards.

(b) A cadet may not register in a hotel with a girl by signing Mr. and Mrs..

(c) "Hotel Stacking" violates the Honor Code, i.e., the hotel is being cheated out of money.

1. Some hotels will give their permission to put an unlimited number of people in the room. If permission is specifically granted, this practice is acceptable.

2. If an additional person spends the night in your room or you spend the night in their room, you are bound to report this fact to the management with an offer to pay for the additional guest. If both you and your guest had rooms in the same hotel it would make no difference where either of you slept.

b. Social Honor:

(1) Many of you will escort this summer, and during the academic year you will be invited to officers' homes. In similar situations, a concept of Social Honor has evolved. The guideline to follow is "Maintain your personal integrity and do not compromise your honor."

(2) "Social Honor" is used in a social situation to save another person embarrassment.

(a) You may tell your hostess that you enjoyed the meal when in fact you did not like the meal.

(b) Social Honor cannot be used to get yourself out of an uncomfortable situation, i.e., you cannot tell a "D" drag that you have room orderly, etc.

NOTE: It would be impossible to cover all the situations that may develop while on leave or while performing social obligations, but by examining a few selected situations and reminding the new cadets to maintain their personal integrity and not compromise their honor, the new cadet may grasp the governing spirit.

III. QUESTION AND ANSWER PERIOD:

General Guidelines: Answer all questions and emphasize that the guideline to follow is "Maintain your personal integrity and do not compromise your honor."

IV. CONCLUSION:

A. The underlying principle of the Honor Code is truth. A cadet is truthful both by act and by implication. The Cadet Honor Code has as its objective, moral courage in setting forth the truth, regardless of consequences.

B. The Honor Code is a way of life. It is always followed, even away from West Point. Social situations in which another person may be embarrassed by the truth can be handled by asking the question, "Have I maintained my personal integrity, or have I compromised my honor?"

LESSON 4

LESSON PLAN

INSTRUCTIONAL UNIT:	Honor and Duty
TYPE:	Lecture
TIME ALLOTTED:	50 Minutes
CLASSES PRESENTED TO:	New Cadet in Company Groups
TOOLS, EQUIPMENT AND MATERIALS:	As required by Instructor
PERSONNEL:	Company Honor Representative
TRAINING AIDS:	None
REFERENCES:	Lesson Plan
STUDY ASSIGNMENT:	None
STUDENT UNIFORM AND EQUIPMENT:	Duty Uniform
TROOP REQUIREMENTS:	None
TRANSPORTATION REQUIREMENTS:	None

I. INTRODUCTION:

Objectives/Reason:

This phase of your orientation concerns itself with the relationship between the Honor Code and Regulations. An understanding of this relationship is of utmost importance to you. During the next four years you will be living under the provisions of Regulations, USCC, one of the documents that governs the Corps of Cadets and its high moral standards. It is up to each of you to understand fully the inter-relationship between these two governing documents.

II. EXPLANATION:

A. Duty and Honor:

1. The Tactical Department and the Honor Committee are complementary in the sense that they both operate to instill "Duty and Honor" in the cadet.

a. Duty and the importance of obedience are emphasized by the Tactical Department and supported by the Honor Committee.

b. Honor is emphasized by the Honor Committee and supported by the Tactical Department.

2. The standards of honor are set by the Corps and regulated through its representatives, the Honor Committee.

3. Honor and the Army:

a. You will find that the Army is run on a basis of confidence and trust -- confidence that an officer can be depended upon to keep the faith that is expected of him when he receives his commission, and trust that when he makes a statement it is correct to the best of his knowledge; complete without pertinent information being omitted; and specifically responsive to the needs which require the information from him. This is the only way the Army can function properly. If you do not have trust and confidence in the Corps of Officers, you would have an Army unworthy of its name and completely ineffective.

b. As mentioned earlier, one of the purposes of the Cadet Honor Code is to instill and develop in every cadet the sense of personal honor which everyone needs, especially as an officer. The same confidence and trust are expected of you as a cadet. Accordingly, any time you make an official statement, it is always accepted as truth.

c. Your training in honor is expanding the basis from which hard moral decisions can be made as a future officer. As you gain experience, you will understand why this is essential. For example, your commander must always be able to count on you to give him a complete and correct picture of the status of your unit. He must not have to question you to find out the weaknesses in training or maintenance in your unit. He will expect you to come to him and tell him. You can see the reason for this way of operating -- the commander at all times, must know the exact state of his unit, if he is to take appropriate action to correct deficiencies, and employ the unit in accordance with its capabilities and state of training. So, here also as a cadet, you will be expected to state the truth, even though sometimes it might be to your disadvantage.

B. Official Statement:

1. What is an Official Statement? Examples are:

a. A report of fact.

b. An answer to a direct question.

c. A signature.

d. When you reported to the man in the Red Sash on your first day, that you had gotten a haircut and gone to the C-Store you were making an Official Statement.

e. The report which a squad leader gives in ranks.

2. When you have been reported for a serious offense, you will be required to write an Explanation of Report. This will be an Official Statement, and it is expected to be complete, straight-forward, and correct.

3. Any time you furnish information in the line of duty, your statement is official. Even such routine and seemingly insignificant questions as "Do you have all your rifle cleaning equipment?" are answered with an official statement. Any statement made by a cadet will be taken as the exact and precise truth.

4. If an error is made in an official statement, it must be corrected as soon as the falseness of the statement is determined.

5. To illustrate the importance of correcting an incorrect statement, I will cite the following example. A section marcher at the beginning of the hour reports that two cadets are absent. He subsequently discovers the third cadet is absent. He must report to the instructor as soon as he discovers the error and correct himself.

6. An unintentional mistake is not a violation of the Honor Code, as long as the mistake is corrected as soon as possible after the error is discovered. People are human and can make mistakes. However, failure to rectify a known error is a violation of the Honor Code. Intentionally false or misleading statements; however, constitute an honor violation.

C. The Signature: The signature is an important extension of an official statement. Whenever you sign, initial, or in any way affix your name to a document, it is your responsibility to ensure that to the best of your knowledge all the information contained is correct.

D. Haphazard Statements: Making a haphazard statement is a dangerous practice. If your statement is false and not corrected, it may be assumed the cadet did not intend to convey the truth. An example is Fourth Class Knowledge. A Fourth Classman may not give an answer which he knows is incorrect. These answers constitute official statements. Consistency with the Honor Code must be maintained.

III. QUESTIONS AND ANSWERS: (To be developed by Instructor)

IV. SUMMARY AND CLOSING REMARKS:

A. Restate importance and interdependence between duty and honor.

B. Restate methods of presenting an official statement.

LESSON 5

LESSON PLAN

INSTRUCTIONAL UNIT:	Accountability, Limits, The Absence Card, ALL RIGHTS
TYPE:	Lecture
TIME ALLOTTED:	50 Minutes
CLASSES PRESENTED TO:	Company Groups
TOOLS, EQUIPMENT AND MATERIALS:	Viewgraph, Slides
PERSONNEL:	Honor Chairman
STUDENT ASSIGNMENT:	None
STUDENT UNIFORM AND EQUIPMENT:	TBA
TROOP REQUIREMENTS:	None
TRANSPORTATION AND REQUIREMENTS:	None

This lesson will be published when a review of present accountability procedures is completed.

A 206

LESSON 6

LESSON PLAN

INSTRUCTIONAL UNIT:	Cadet Honor Code and the Honor System
TYPE:	Lecture
TIME ALLOTTED:	50 Minutes
CLASSES PRESENTED TO:	Company Groups
TOOLS, EQUIPMENT AND MATERIALS:	None
PERSONNEL:	Company Honor Representatives
TRAINING AIDS:	None
REFERENCES:	Past Honor Cases
STUDY ASSIGNMENT:	None
STUDENT UNIFORM AND EQUIPMENT:	Duty Uniform
TROOP REQUIREMENTS:	None
TRANSPORTATION REQUIREMENTS:	None

I. INTRODUCTION:

Objective/Reasons: A cadet is responsible for his actions. He must therefore answer all questions in a correct, straightforward and complete manner. However, there are certain questions which may be termed improper.

II. EXPLANATION:

A. Description:

1. "Improper Questioning."

a. Sometimes a cadet may be called upon to answer what is termed an "improper question." An improper question is a question which if answered would subject the cadet to disciplinary action. You must keep

in mind that normally no one will ask you a question which will force you to incriminate yourself unless he has a good idea that you are connected with the offense.

b. Before making an inquiry or requiring a report, an officer or cadet must insure that:

(1) An act or incident did occur and it was in fact to the detriment of good order and discipline of the command.

(2) There is sufficient evidence to indicate that the cadet being queried was involved or possesses a direct knowledge about the act or incident.

(3) The matter involved does not warrant trial by court-martial.

c. In a case where an individual believes that an improper question has been asked, he should answer the question and then inform the questioner that he believes the question may have been improper. If the situation cannot be resolved the Chairman of the Honor Committee should be informed. If the Company Honor Representative cannot resolve the issue he will submit it to the Deputy Commandant

B. In order to understand the distinction between honor and regulations, we will spend the rest of the period going over examples of possible honor violations.

III. QUESTIONS AND ANSWERS: (To be developed by Instructor)

IV. SUMMARY AND CLOSING REMARKS:

A. Restate differentiation between the Honor Code and Honor System.

LESSON 7

LESSON PLAN

INSTRUCTIONAL UNIT:	Honor in Academics
TYPE:	Lecture
TIME ALLOTTED:	50 Minutes
CLASSES PRESENTED TO:	Company
TOOLS, EQUIPMENT AND MATERIALS:	Movie
PERSONNEL:	Honor Chairman
TRAINING AIDS:	None
STUDY ASSIGNMENT:	None
STUDENT UNIFORM AND EQUIPMENT:	Duty Uniform
TROOP REQUIREMENTS:	None
TRANSPORTATION REQUIREMENTS:	None

I. INTRODUCTION:

A. Objectives and Reasons:

1. Inherent in the mission of the Military Academy is the objective of instilling in each cadet a high sense of integrity and honor. A full understanding of the Honor Code is essential to supporting these precepts.

2. The basic principle of the Honor Code, as applied to academics, is that all work submitted for a grade is a product of the cadet's individual effort. The fact that cadets are able to perform in the classroom in an unsupervised manner serves as a source of great pride to the Corps. It is essential that all cadets respect this privilege

to ensure that no unfair advantage is taken.

II. EXPLANATION:

A. Honor in the Classroom: Some procedures employed in the classroom with respect to written recitations are meant to aid the cadet in maintaining his honor.

1. During written recitations staggering of desks prevents the inadvertent overseeing of another cadet's work.

2. Cadets having adjacent boards will have different problems during graded recitations.

3. "Begin work" and "cease work" will be given so that no cadet will have an unfair advantage by having additional time for work.

4. Notes will not be made in manuals or reference books unless authorized by the department concerned. Unless prohibited by the department, notes may be made in other textbooks. Technical handbooks authorized for use in the solution of problems in classrooms or laboratories will contain no markings other than index tabs, name of owner, and any material placed therein under department instructions.

5. The possession of solution pamphlets or sheets as an aid in lesson preparation is authorized. Solutions to previous years' writs are authorized as an aid in preparation for graded work.

6. Cadets will receive specific instructions from the department with regard to the correction of graded work.

7. Any cadet observing another cadet attempting to cheat will insure that the instructor is notified.

B. Homework:

1. Homework is any written product prepared outside the classroom and submitted to an instructor for formal evaluation. It may or may not be graded.

2. Homework will normally represent a cadet's individual effort. However, certain homework exercises may, at the direction of the department concerned, be the result of a collaborative or assisted effort.

3. No discussion or collaboration is permitted after the actual writing or computation begins on any outline, draft, or final paper which the cadet will submit as his own product. However, in certain instances, the Heads of Academic Departments will specify what collaboration is authorized.

4. The act of submitting homework means that:

a. The manual composition, to include handwriting, typing, sketching, and mark-sensing or key-punching is the cadet's own work.

b. The product submitted is the cadet's own, except as otherwise acknowledged or authorized in conformance with the instructions of the department involved. Cadets must footnote all work that is not a product of their own work.

C. Meaning of Signature in Academics: A cadet is required to sign his name to each homework requirement unless instructed otherwise. The signature is a reminder that the act of submission constitutes a cadet's word that the work is his own and pledges that the paper is fairly and honorably his own product.

1. That it has not been reviewed or proofread by any person except his faculty advisor.

2. That the homework has not been previously graded.

3. That the paraphrased or summarized reproduction of another writer's material and exact reproductions have been documented according to the Style Manual.

a. Cadets will insure that any ideas, phrases, summarizations and direct quotations have been properly documented according to the procedures outlined in the Style Manual.

b. Plagiarism is the incorporation of another's work with the intention of presenting it as your own work.

c. Cadets having questions concerning footnotes should not hesitate to ask their instructors for guidance.

D. Honor Outside the Classroom:

1. A cadet who has already attended a lesson may not transmit to another, who has not yet attended, any information revealing the identity, nature, or content of any exercises used. Exceptions: Cadets may announce whether or not there was a writ. No communication of information should be made since in some instances work ungraded in one hour may be graded the next hour.

2. Cadets who have already attended a lesson are free to discuss among themselves all aspects of the attendance. However, particular care must be taken to insure that all cadets within hearing distance have completed the lesson.

3. Special care must be taken to avoid careless talk in hallways of academic buildings, locker rooms, at Corps Squad and Extracurricular Activities tables. If a cadet inadvertently hears any information concerning a graded lesson, that he has yet to attend, he should notify his instructor of this fact as soon as possible.

E. Tutoring: Tutoring of cadets by other cadets is desirable and within the scope of Regulations, USCC. However, in order to reudce the possibilities of an inadvertent breach of the Honor Code, no cadet may be tutored by a cadet from a regiment other than his own without specific approval of the Commanding Officer of his regiment.

III. QUESTIONS AND ANSWERS: (To be developed by Instructor)

IV. SUMMARY AND CLOSING REMARKS:

A. Unfair advantage in academic work is inconsistent with the Honor Code. This dictates that certain practices in the classroom and in preparation of homework should be followed in order to avoid a possible honor violation.

B. Points to remember:

1. Be especially careful discussing academics in the presence of cadets from different regiments.

2. The act of submitting homework means that the work is totally your own and that any aid or information from an outside source has been properly documented.

3. Anytime you feel that you have inadvertently gained an unfair advantage, be sure the instructor is notified.

LESSON 8

LESSON PLAN

INSTRUCTIONAL UNIT:	Honor in the Army
TYPE:	Lecture
TIME ALLOTED:	50 Minutes
CLASS PRESENTED TO:	New Cadet Regiment
EQUIPMENT AND MATERIALS:	None
PERSONNEL:	Tactical Department
TRAINING AIDS:	None
REFERENCES:	None
STUDY ASSIGNMENTS:	None
STUDENT UNIFORM AND EQUIPMENT:	Duty Uniform
TROOP REQUIREMENTS:	None
TRANSPORTATION REQUIREMENTS:	None

NOTE: This period will be presented by the Tactical Department. The emphasis will be on honor as an officer and its carry through to cadet life.

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LESSON 9

LESSON PLAN

INSTRUCTIONAL UNIT:	Closing Remarks, Honor Code
TYPE:	Lecture
TIME ALLOTTED:	50 Minutes
CLASS PRESENTED TO:	New Cadet Regiment
EQUIPMENT AND MATERIALS:	None
PERSONNEL:	Honor Chairman
TRAINING AIDS:	None
REFERENCES:	All previous lessons
STUDY ASSIGNMENTS:	None
STUDENT UNIFORM AND EQUIPMENT:	Duty Uniform
TROOP REQUIREMENTS:	None
TRANSPORTATION REQUIREMENT:	None

I. INTRODUCTION:

A. Objective: To review the Honor Instruction presented to the Class of 1979 and to outline their continuing instruction during the upcoming year.

B. Reason: To review the necessity for a firm foundation needed by the members of the Class of 1979 in order for them to understand the necessity of a high honor concept for the rest of their lives.

II. EXPLANATION:

A. The Honor Code to which you have been introduced is extremely

simple: "A cadet will not lie, cheat, or steal, nor tolerate any cadet who does." The toleration clause is just as important as the rest of the Code. It is the spirit of the Code which we are attempting to uphold. In all cases, both official and unofficial, direct and indirect, at West Point and away from West Point, the key question always is to ask "Am I upholding the spirit of the Code?"

B. Verbal and written statements, as well as actions, are covered by the Honor Code. A cadet is honest in word and deed. Quibbling is not tolerated.

C. Any time a cadet feels that honor is being improperly involved with regulations, he should report this to his Company Honor Representative. If the situation involves the asking of an improper question, the cadet must answer the question first and then can report it to his Company Honor Representative.

D. Cadets must remember that their conduct in the classroom must be consistent with the Honor Code. Cheating is the taking of an unfair advantage. If a cadet ever feels that he has inadvertently received an unfair advantage, he should immediately inform his professor. Cadets should also be very conscious that they meet the documentation requirements as outlined in the Style Manual.

E. Cadets must remember that although a Regulation violation is not an honor violation, any statement which may accompany the regulation comes under the guidelines set down by the Honor Code.

F. Some time during the first week in your permanent companies you will receive instruction concerning the procedures that are followed from the beginning of an honor investigation to the final decision of the Honor Board. You should pay close attention to this lesson so that you can better understand how your Honor Committee operates.

G. When you get into your permanent companies, your individual Honor Representatives will talk with you. These individuals are there to help you. Get to know them and feel free to ask questions at any time. This is his job!

H. Throughout the upcoming year and until you graduate you will receive instruction in Honor. Remember you are about to become

a member of the Corps of Cadets in full standing. With this acceptance you become an integral part of the enforcement and furthering of the Honor Code. You are expected to give as much as you receive. Three years from now, one of you sitting out there will be standing in front of the Class of 1982 and passing the Code along -- start preparing yourselves for that task now.

HEADQUARTERS DEPARTMENT OF THE ARMY
Washington, D. C.

15 March 1971

PART ONE of these regulations, promulgated by authority of the Secretary of the Army is published for the guidance of all concerned.

BY ORDER OF THE SECRETARY OF THE ARMY:

OFFICIAL:

WILLIAM C. WESTMORELAND
General, United States Army
Chief of Staff

KENNETH G. WICKHAM
Major General, United States Army
The Adjutant General

These Regulations supersede Regulations for the United States Military Academy dated 3 June 1965

C5 6 September 1974
C6 20 January 1975

ARTICLE 12

DISCIPLINE

12.01. UNIFORM CODE OF MILITARY JUSTICE. The cadets at the United States Military Academy are a part of the Army and subject to military law and the Uniform Code of Military Justice. (10 U.S.C. 802(2)).

12.02. COURTS-MARTIAL. The Superintendent has been designated by the Secretary of the Army to convene general courts-martial. (10 U.S.C. 822 (a) (6)).

No court-martial sentence extending to dismissal of a cadet shall be executed until approved by the Secretary of the Army, or such Under Secretary or Assistant Secretary as may be designated by him. (10 U.S.C. 871 (b)).

12.03 PUNISHMENT THAT MAY BE AWARDED CADETS. The Superintendent may award the following classes of punishments to cadets: Admonition, reprimand, restriction to limits, deprivation of privileges, reduction of officers or non-commissioned officers, punishment tours, fatigue punishments, loss of leave, and suspension from the Military Academy. (See Paragraph 12.09 for special authority regarding hazing.) (C6, 20 Jan 75)

12.04. UNDESIRABLE HABIT OR TRAIT OF CHARACTER. A cadet who exhibits a habit or trait of character which renders his retention undesirable may be separated from the Military Academy. (C5, 6 Sep 74)

12.05. DRUGS/NARCOTICS. A cadet who wrongfully possesses, uses, sells, or transfers marijuana, or any narcotic, hallucinogenic, depressant or stimulant drug, may be separated from the Military Academy or subjected to disciplinary action under paragraph 12.03 of this regulation. (C5, 6 Sep 74)

12.06. INTOXICATING LIQUORS. a. Except as specifically authorized in Regulations, United States Corps of Cadets, a cadet who, while on the West Point Military Reservation, drinks, possesses, or traffics in intoxicating liquor, or is found in any degree under the influence of intoxicating liquor, may be separated from the Military Academy or subjected to disciplinary action under paragraph 12.03 of this regulation.

b. Elsewhere, a cadet who drinks, possesses, or traffics in intoxicating liquor in such manner and under such conditions as to reflect discredit upon the Corps of Cadets, may be separated from the Military Academy or subjected to disciplinary action under paragraph 12.03 of this regulation. (C5, 6 Sep 74)

12.07. SEXUAL MISCONDUCT. A cadet who engages in an act of sexual misconduct, including but not limited to:

a. Lewd and lascivious act

b. Indecent exposure

c. Indecent act with, or assualt upon, a child

d. Homosexuality

e. Any other indecent act or offense

may be separated from the Military Academy or subjected to disciplinary action under paragraph 12.03 of this regulation. (C5, 6 Sep 74)

12.08. UNGENTLEMANLY CONDUCT. A cadet is required to abstain not only from all vicious, immoral, and irregular conduct, but also is enjoined to conduct himself upon every occasion with the propriety and decorum which characterizes the society of gentlemen. Any cadet who conducts himself in a manner unbecoming an officer and a gentleman may be separated from the Military Academy or subjected to disciplinary action under paragraph 12.03 of this regulation. (C5, 6 Sep 74)

12.09. HAZING. a. Hazing is defined as the wrongful striking, laying open hand upon, treating with violence or offering to do bodily harm by one cadet in a superior-subordinate relationship to another cadet with intent to punish or injure him or other unauthorized treatment by such cadet of another cadet of a tyrannical, abusive, shameful, insulting, or humiliating nature.

b. Hazing is prohibited, and whenever, in the judgment of the Superintendent, investigation has disclosed substantial evidence that a cadet has committed an act or acts of hazing, such cadet shall be separated from the Military Academy, suspended, or awarded such other punishment as the Superintendent shall deem appropriate, provided that if a cadet charged with violating this regulation requests in writing a trial by general court-martial, he may not be separated for such offense except under sentence of such a court. (10 U.S.C 4352) (C5, 6 Sep 74)

12.10. DISORDERS AND NEGLECTS. All disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the armed forces, and all crimes or offenses not capital, of which persons subject to the Uniform Code of Military Justice may be guilty, may, at the discretion of the Superintendent, be taken cognizance of by a general court-martial and punished at the discretion of such court. (10 U.S.C. 934) (C5, 6 Sep 74)

12.11. COMBINATIONS AMONG CADETS. A cadet who engages in a combination or joint action with other cadets for the purpose of violating or evading any regulations, orders, or instructions issued by competent authority, or for the purpose of expressing disapprobation or censure of any person or persons in the military service (except as authorized by law or regulation providing for redress of grievances or otherwise making complaints through appropriate channels) may be separated from the Military Academy or subjected to disciplinary action under paragraph 12.03 of this regulation. (C5, 6 Sep 74)

12.12. INDEBTEDNESS. A cadet who demonstrates a pattern of intentional or negligent failure to pay just debts may be separated from the Military Academy or subjected to disciplinary action under paragraph 12.03 of this regulation. (C5, 6 Sep 74)

C5 6 September 1974

12.13. CRIMINAL CONVICTION. A cadet who has been convicted of a criminal offense by a court of domestic or foreign civilian jurisdiction or by court-martial, may be separated from the Military Academy. (C5, 6 Sep 74)

12.14. VIOLATION OF THE CADET HONOR CODE. The Cadet Honor Code states that a cadet will not lie, cheat or steal, nor tolerate those who do. A cadet who violates the Cadet Honor Code shall be separated from the Military Academy. (C5, 6 Sep 74)

12.15. MAJOR DISCIPLINARY OFFENSE. A cadet who commits a major disciplinary offense may be separated from the Military Academy or subjected to disciplinary action under paragraph 12.03 of this regulation. A major disciplinary offense is one that is punishable under the Uniform Code of Military Justice by confinement for a term of six months or more. If such offenses are processed for administrative separation under this provision, an informal preliminary inquiry will be conducted without utilizing the procedures of the Cadet Disciplinary System. (C5, 6 Sep 74)

12.16. CONSCIENTIOUS OBJECTION. A cadet who applies for discharge or reclassification on the ground of conscientious objection will, at the discretion of the Superintendent, be placed on leave of absence pending action on his application by Department of the Army. If the application for discharge is approved by the Department of the Army, he will be separated accordingly. If the application for discharge or reclassification is disapproved or the cadet is reclassified by the Department of the Army, he will be permitted to resign or will be involuntarily separated from the Military Academy. (C5, 6 Sep 74)

12.17. MARRIAGE. Any cadet who is married prior to graduation shall be separated from the Academy. (C5, 6 Sep 74)

C5 6 September 1974

(DATE)

SUBJECT: Resignation in Lieu of (Court-Martial) (Appearance Before A Board of Officers)

7. I am _____ years of age. (My parents have knowledge of my resignation.)

8. I understand that prior to being forwarded to Department of the Army, this resignation may be withdrawn only with the approval of the Superintendent and thereafter with the approval of Headquarters, Department of the Army.

9. I have retained a copy of this resignation (and of any inclosures hereto).

Signature of Cadet
TYPED NAME, SSAN
Cadet Company, Regiment
United States Corps of Cadets

Having been advised by me of the basis for his contemplated (trial by court-martial and the maximum punishment authorized under the Uniform Code of Military Justice) (appearance before a board of officers) the procedures and rights available to him and the effect of such resignation, (Name of Cadet) personally made the choices indicated in the foregoing resignation.

Signature of Counsel
TYPED NAME, SSAN
Grade, Branch

Figure 2 - Format for resignations in accordance with Paragraph 16.03 of this Regulation (C5, 6 Sep 74)

ARTICLE 16

SEPARATIONS

16.01. GENERAL. Department of Defense Directive 1332.23, dated 9 May 1968 provides for the following direction concerning separation of cadets prior to completion of the course of instruction, or subsequent to graduation on refusal to accept an appointment as a commissioned officer:

a. A cadet who enters the United States Military Academy directly from a civilian status assumes a military service obligation of six years (10 U.S.C. 651).

b. A cadet who is separated from the Academy because of demonstrated unsuitability, unfitness, or physical disqualification for military service will be discharged.

c. A cadet who enters the Academy directly from a civilian status and resigns or is separated from the Academy prior to the commencement of the Second Class Academic Year will be discharged. A resignation tendered by a Fourth or Third Classman will be accepted when found to be in the best interests of the service. A cadet who tenders a resignation will be required to state a specific reason for his action.

d. A cadet who enters the Military Academy from the Regular or Reserve Component of any military service or resigns or is separated from the Military Academy prior to the commencement of the Second Class Academic Year will revert to his former status for completion of any prior service obligation. All service as a cadet is counted in computing the unexpired portion of the enlistment or period of obligated service (10 U.S.C. 516(b)).

e. With the commencement of the Second Class Academic Year, a First or Second Classman who resigns or is separated prior to completing the course of instruction, except for physical disqualification, unfitness, or unsuitability, normally will be transferred to the Reserve Component in an enlisted status and ordered to active duty for not less than two years (10 U.S.C. 4348(b)).

(1) Completion or partial completion of service obligation acquired by prior enlistment in no way exempts a separated cadet from being transferred to a Reserve Component and ordered to active duty under the provisions of 10 U.S.C. 4348(b)).

(2) When separation occurs as a result of deficiencies which are not considered willful, the active duty provision may be waived by the Department of the Army, upon recommendation of the Superintendent.

f. In any case where it is necessary to determine whether a cadet resigned or was separated prior to or following the commencement of the Second Class Academic year, the critical date is the date that action is initiated, either by the cadet or by authorities at West Point.

C3 15 December 1972
C5 6 September 1974

g. Any First Classman who completes the course of instruction and declines to accept an appointment as a commissioned officer will be transferred to the Reserve Component in an enlisted status and ordered to active duty for four (4) years (10 U.S.C. 4348(b)).

h. In each case where a cadet is separated from the Military Academy, the Selective Service System will be notified of the individual's change in status.

i. The agreement statements signed by all entering Fourth Classmen (USMA Form 5-50) will contain the active duty and discharge provisions in a-g above.

j. The provisions of paragraph 5.18 of these regulations will be brought to the attention of each cadet separated for any reason from the United States Corps of Cadets. (AGPB-M 351, 11, USMA 10 April 1962).

k. An annual report concerning separated cadets will be submitted to the Assistant Secretary of Defense (Manpower and Reserve Affairs) not later than 30 August of each year. This report will contain the information required by paragraph VI, DOD Directive 1332.23, dated 9 May 1968.

l. Where a hearing before a board of officers is either authorized or required before a cadet is separated under Article 16 of these regulations, the appointing authority will provide the board with a competent reporter. If a competent enlisted or Government civilian employee reporter is not available, a civilian contract reporter may be employed.

16.02. UNQUALIFIED RESIGNATIONS. a. A cadet who tenders an unqualified resignation from the Military Academy will, upon acceptance by Headquarters, Department of the Army, be separated in accordance with applicable procedures below.

b. Unless otherwise authorized by the Superintendent, a cadet who is under 21 years of age must inclose the written acknowledgment of his parents or guardian with his letter of resignation.

c. A cadet may withdraw his tender of resignation upon approval of the Superintendent until such time as it is forwarded to Headquarters, Department of the Army. Thereafter, it may be withdrawn only upon the approval of Headquarters, Department of the Army.

d. Each letter of unqualified resignation will comply with the format of Figure 1 to this Article. (C5, 6 Sep 74)

16.03. PROCEDURES FOR COURT-MARTIAL, BOARD OF OFFICERS, OR RESIGNATION.

a. A cadet who is subject to separation or punitive action under the provisions of Article 12 of this Regulation, except paragraph 12.16, may, in the discretion of the Superintendent, be tried by court-martial if the conduct

includes a violation of the Uniform Code of Military Justice, be brought before a board of officers convened by the Superintendent, or be permitted to resign in lieu thereof.

b. In the event of trial by court-martial, the action taken will be in accordance with the provisions of the Uniform Code of Military Justice, the Manual for Courts-Martial (U. S.), and applicable regulations.

c. If the cadet appears before a board of officers, the board shall consist of one colonel who shall be the president and at least two other field grade officers who shall be voting members. For good cause shown, the Superintendent may modify the grade restriction for the members. The board will make findings with respect to the matter under investigation and, if appropriate, will make recommendations concerning separation from the Military Academy, discharge from the Army, and the type of discharge. The board may consider the cadet's prior conduct and any part of his record of military service that it deems pertinent. The board will submit a report of its proceedings and its findings and any recommendations to the Superintendent. The Superintendent will prepare a proposed recommendation to Headquarters, Department of the Army. Prior to the forwarding of the case to Headquarters, Department of the Army, the cadet concerned will be provided an opportunity to review all the relevant material in the file, including the Superintendent's proposed recommendation, subject to security standards and questions of privilege. The SJA review of the board proceedings is considered a privileged attorney-client communication, and will not be made available to the cadet concerned. The cadet will be permitted to rebut any adverse evidence and to submit any statement or relevant evidence he desires. His submission will be reduced to writing and incorporated into the file. The Superintendent should then reconsider his proposed adverse recommendation, in light of the submitted material, to determine whether Secretarial action is still believed appropriate. Should the cadet choose not to submit a statement or other evidence, or fails to do so within a reasonable time, the completed file should reflect that fact.

d. If permitted by the Superintendent, a cadet may tender a resignation from the Academy after having been advised of the implications thereof. The resignation shall be in lieu of trial by court-martial or in lieu of appearance before a board of officers. It shall be processed as directed by the Superintendent and shall include pertinent information as set forth in Figure 2 to this Article.

e. A resignation under the provisions of this paragraph may result in the issuance of a discharge certificate under other than honorable conditions. The resignation will include a statement of counsel, as shown in Figure 2.

f. A cadet may withdraw his tender of resignation upon approval of the Superintendent until such time as it is forwarded to Headquarters, Department of the Army. Thereafter, it may be withdrawn only upon the approval of Headquarters, Department of the Army.

C5 6 September 1974

g. A cadet who tenders a resignation under the provisions of this paragraph may submit statements in his own behalf. Prior to submitting the letter of resignation, the cadet concerned will be afforded the opportunity to consult with appointed military counsel, or military counsel of his own choice if he is reasonably available, or civilian counsel at his own expense. (C5, 6 Sep 74)

16.04. SEPARATION DOCUMENTS. a. All documents pertinent to the separation of a cadet from the Academy will be forwarded to Headquarters, Department of the Army, for final action. The Superintendent will make recommendations concerning separation from the Academy and discharge from the service. If discharge is recommended, the type of discharge certificate recommended to be issued will be specified.

b. The discharge certificates issued to cadets separated administratively will be of the following types:

(1) Honorable Discharge - DD Form 256A.

(2) General Discharge - (Under Honorable Conditions) DD Form 257A.

(3) Discharge Under Other than Honorable Conditions - DD Form 794A.

c. A cadet who is separated and discharged under the provisions of Article 9 and under paragraphs 12.14, 12.16 and 12.17 of this Regulation normally will be issued an Honorable Discharge certificate unless Headquarters, Department of the Army, determines that the facts and circumstances surrounding the cadet's separation warrant issuance of a discharge of lower character. (C5, 6 Sep 74)

16.05. RECORD OF DISENROLLMENT. Upon receipt of a request from another service for information concerning a cadet disenrolled from the United States Military Academy, a Record of Disenrollment, DD Form 785, will be completed by the Superintendent and returned directly to the requesting service. One copy of the completed form will be forwarded to the Adjutant General, Department of the Army. (C5, 6 Sep 74)

C5 6 September 1974

FIGURE 1

(DATE)

SUBJECT: Unqualified Resignation

Superintendent
United States Military Academy
West Point, New York 10996

1. I, (Name of Cadet), do hereby voluntarily tender my resignation from the United States Military Academy.

2. I understand that if this resignation is accepted, I may (be transferred to the Reserve Component in an enlisted status and ordered to active duty for not less than two years) (be reverted to my former enlisted status) (be discharged from the United States Army).

3. I understand that I may not be appointed to a commissioned grade in a regular component of the United States Army, Navy, Marine Corps, or Air Force, prior to the commissioning date of my current class at the United States Military Academy.

4. I agree to liquidate any indebtendess that I may have to the Treasurer, United States Military Academy, as soon as possible after my account is settled and a final statement rendered.

5. I am _____years of age. (My parents have knowledge of my resignation.)

6. I understand that prior to being forwarded to Department of the Army, this resignation may be withdrawn only with the approval of the Superintendent and thereafter with the approval of Headquarters, Department of the Army.

7. I have retained a copy of this resignation (and of any inclosure hereto).

Signature of Cadet
TYPED NAME, SSAN
Cadet Company, Regiment
United States Corps of Cadets

Figure 1 - Format for resignation in accordance with Paragraph 16.02 of this Regulation (C5, 6 Sep 74)

C5 6 September 1974

FIGURE 2

(DATE)

SUBJECT: Resignation in Lieu of (Court-Martial) (Appearance Before A Board of Officers)

Superintendent
United States Military Academy
West Point, New York 10996

1. Having been advised of the basis for the contemplated action against me under the provisions of Articles 12 and 16, Regulations, United States Military Academy, I, (Name of Cadet), hereby voluntarily tender my resignation from the United States Military Academy in lieu of (trial by court-martial) (appearance before a board of officers).

2. I understand that if this resignation is accepted, I may (be transferred to the Reserve Component in an enlisted status and ordered to active duty for not less than two years) (be reverted to my former enlisted status) (be discharged from the United States Army). I further understand that, is discharged, it may be under other than honorable conditions which may render me ineligible for many or all benefits under both federal and state laws and that this discharge may carry substantial prejudice in civilian life. I further understand that if issued a general discharge under honorable conditions, I may expect to encounter substantial prejudice in civilian life.

3. Statements in my own behalf (are) (are not) submitted herewith.

4. Before making this decision, I was afforded the opportunity to consult with appointed counsel, military counsel of my own choice, if reasonably available, or civilian counsel at my own expense. I (declined the opportunity to consult with counsel) (have consulted with counsel, (Name of Counsel), who has fully advised me of the nature of my rights prior to, during and after (a trial by court-martial) (an appearance before a board of officers).

5. I understand that I may not be appointed to a commissioned grade in a regular component of the United States Army, Navy, Marine Corps or Air Force prior to the commissioning date of my current class at the United States Military Academy.

6. I agree to liquidate any indebtedness that I may have to the Treasurer, United States Military Academy, as soon as possible after my account is settled and a final statement rendered.

(1)

COPY RECEIVED
Robert B. Fiske Jr.
UNITED STATES ATTORNEY
11/29/76
Marian L. Bryant